

REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF FLORIDA

FROM JANUARY 1, 1929, TO DECEMBER 31, 1930

FRED H. DAVIS
Attorney General



TALLAHASSEE, FLORIDA

1931

STATE

Daily Democrat  *Tallahassee, Fla.*

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I.

PERSONNEL OF ATTORNEY GENERAL'S OFFICE

FRED H. DAVIS

Attorney General.

H. E. CARTER.....	Assistant Attorney General
ROY CAMPBELL.....	Assistant Attorney General
MRS. ALLIE YAWN BROWN.....	Law Clerk
MISS ANNA R. BRAY* (MRS. LINDSEY)	Law Clerk
MISS EVELYN DAVIS.....	Secretary and Law Clerk
MRS. M. E. GANNON.....	Law Clerk
MISS GENEVIEVE BLEDSOE*.....	Secretary and Law Clerk
MISS BESSIE THORNE.....	Stenographer

*Resigned during period of this report.

II.

ATTORNEYS GENERAL OF FLORIDA 1845-1931

JOSEPH BRANCH.....	1845-1846
AGUSTUS E. MAXWELL.....	1846-1848
JAMES T. ARCHER.....	1848-1848
DAVID P. HOGUE.....	1848-1853
MARIANO D. PAPY.....	1853-1860
JOHN B. GALBRAITH.....	1860-1868
JAMES D. WESTCOTT, JR.....	1868-1868
A. R. MEEK.....	1868-1870
SHERMAN CONANT.....	1870-1870
J. B. C. DREW.....	1870-1872
H. BISBEE, JR.....	1872-1872
J. P. C. EMMONS.....	1872-1873
WILLIAM A. COCKE.....	1873-1877
GEORGE P. RANEY.....	1877-1885
C. M. COOPER.....	1885-1889
WILLIAM B. LAMAR.....	1889-1903
JAMES B. WHITFIELD.....	1903-1904
W. H. ELLIS.....	1904-1909
PARK TRAMMELL.....	1909-1913
THOMAS F. WEST.....	1913-1917
VAN C. SWEARINGEN.....	1917-1921
RIVERS BUFORD.....	1921-1925
J. B. JOHNSON.....	1925-1927
FRED H. DAVIS.....	1927-1931

PAST ASSISTANT ATTORNEYS GENERAL OF FLORIDA

HON. CHARLES. O. ANDREWS.....	1911-1919
HON. GLENN TERRELL.....	1915-1917
HON. WORTH TRAMMELL.....	1917-1921
HON. D. STUART GILLIS.....	1919-1921
HON. J. B. GAINES.....	1921-1926
HON. MARVIN C. McINTOSH.....	1921-1926
HON. H. E. CARTER.....	1926-1931
HON. ROY CAMPBELL.....	1926-1931

Special Assistants to Attorney General Under Chapter 11828 Acts of 1927.
(Repealed by Chap. 14556, Acts 1929, Approved June 19, 1929.)

Hon. A. H. WILLIAMS, Tallahassee, Fla.
Hon. J. McHENRY JONES, Pensacola, Fla.
Hon. WALLACE TERVIN, Bradenton, Fla.

III.

In Memoriam

TO

THOMAS FRANKLIN WEST
ATTORNEY GENERAL OF FLORIDA

1913-1917

In a profession that offers success and advancement only to the man of sterling character and distinct ability, Judge West, Attorney General of Florida from 1913-1917, won precedence that marked him as one of the distinguished lawyers and jurists of his native state, as was evident when he was promoted to serve on the bench of the Supreme Court of Florida, and after he had previously given able administration as attorney-general of the state. His death while serving as a Circuit Judge of the First Judicial Circuit of Florida occurred suddenly on February 23, 1931 and was a distinct shock to his many friends in Florida.

Judge West was born in the country near Milton, judicial center of Santa Rosa County, Florida, on the 23rd of November, 1874, and is a son of the late Leonard F. and Frances Elizabeth (McArthur) West, the father having been a man of broad and varied activities, interested in agricultural and live-stock enterprise, a factor in connection with the lumber industry, and concerned largely in banking. He was one of the influential citizens of Florida and both he and his wife here continued to maintain their home until their deaths.

After due preliminary discipline Judge West entered the Florida State Normal School at DeFuniak Springs, where he was a student in the period from 1894 to 1896. In 1898-9 he attended the law school of historic old Washington & Lee University, at Lexington, Virginia, and in 1900 he was duly admitted to the bar of his native state. He forthwith engaged in the practice of his profession at Milton, county seat of Santa Rosa County, and here his distinctive success and advancement not only attested his powers as a resourceful trial lawyer and well fortified counselor but also set at naught any application of the scriptural aphorism that "a prophet is not without honor save in his own country." It is pleasing thus to record that his initial success in his chosen profession was won in his native county. Judge West was always manifested the finest loyalty in the matter of civic stewardship, and was always active in public affairs aside from the direct line of his profession. In 1903 and again in 1911 he represented Santa Rosa County in the lower house of the Florida Legislature. He was a member of the State Senate from 1905 to 1907, inclusive, and in 1906 he was chosen as a member of the commission assigned to the work of revising the Statutes of Florida. The result of this work in the volume entitled "The General Statutes of the State of Florida," containing all the public statistics of the state of a general and public nature. Still further honors came to

Judge West in connection with the governmental affairs of Florida, in his election to the office of attorney-general of the state, an office of which he continued the efficient incumbent from January 7, 1913, to September 1, 1921.

As attorney-general he represented the state with notable success in a number of important suits in the Supreme Court of the state and the Supreme Court of the United States as shown by the reports of these courts.

His most noteworthy victory as Attorney General was in the leading case of *Rast versus Van Deman and Lewis Company* decided in favor of the State by the Supreme Court of the United States after an adverse decision of a lower Federal Court. 240 U. S. 342. 60 L. Ed. 679.

He was then appointed a justice of the Florida Supreme Court, and in the regular election in November, 1918, he was elected to serve out the unexpired term of his predecessor. His record on the supreme bench is one that has conferred dignity and honor upon the state and judicial system, and by re-election in November, 1918, for a full term of six years. He is one of the very few men in the state's history who has served in high offices in each of the three departments of the state government. In further recognition of his standing in his profession he was elected and served as president of the State Bar Association in the years 1915-16. He was Chief Justice of the Florida Supreme Court from September 1, 1917 until December 23, 1925, when he accepted a commission as a Circuit Judge in order to return to live in his old home place.

Judge West took loyal interest in all that concerns the civic and material welfare and advancement of his native state. He was a democrat in politics. His religious faith was that of the Presbyterian Church. He was affiliated with the Masonic fraternity, in which he rounded the circle of the York Rite and was a Knight Templar, besides which he was affiliated with the Benevolent and Protective Order of Elks. He was a member of the Country Club at Tallahassee, his domicile having been maintained at the capital city during the period of his service as attorney-general and as a member of the Supreme Court, until he resigned from the Supreme Court and moved to Milton to take up his duties as a Circuit Judge.

Thousands of loyal friends and admirers mourn his untimely death which removed from activity in the public welfare a faithful public official and a loyal upright citizen.

IV.

IN MEMORIAM

ALEXANDER HAWKINS WILLIAMS

Former Special Assistant Attorney General

Alexander Hawkins Williams, former Special Assistant Attorney General, was born in Tallahassee, Florida, on March 6, 1876, and lived in Tallahassee all of his life. He was a son of Joseph John Williams and Eliza Thompson Williams.

His father moved to Leon County, Florida, from Raleigh, North Carolina, in the year 1853. He was in the service of the Confederate States, serving on the staff of General Cobb, and was wounded in the battle of Natural Bridge. In 1865 the elder Williams was a member of the House of Representatives from Leon County and was elected Speaker of the House of Representatives at that session of the Legislature.

Alexander Hawkins Williams was educated in the public schools of Leon County. He was employed in the office of the State Comptroller for many years, and thereby gained valuable information relative to the various departments of the State Government.

He served the City of Tallahassee as Clerk and Treasurer for about seventeen years and as municipal judge for about ten years. He was admitted to the practice of law in May, 1906. He was elected a member of the House of Representatives from Leon County for five consecutive terms, serving during the sessions of 1917, 1919, 1921, 1923 and 1925.

During his service in the Legislature, he was for three sessions the colleague of Fred H. Davis, who became Attorney General in 1927. In that same year, Mr. Williams was appointed by Governor John W. Martin to serve as Special Assistant to the Attorney General under General Davis's administration, and he served with distinction in that capacity.

Mr. Williams died on January 30, 1931.

V.

JUDICIAL DEPARTMENT OF FLORIDA

SUPREME COURT JUSTICES

TALLAHASSEE

DIVISION A.

Hon. LOUIE W. STRUM, Chief Justice.
Hon. WILLIAM H. ELLIS.
Hon. ARMSTEAD BROWN.

DIVISION B.

Hon. JAMES B. WHITFIELD, Presiding Justice.
Hon. GLENN TERRELL.
Hon. RIVERS BUFORD.

SUPREME COURT COMMISSIONERS

Hon. CHARLES O. ANDREWS.
Hon. CHARLES E. DAVIS.
Hon. SAM M. MATHEWS.

CLERK

Hon. G. T. WHITFIELD.

ATTORNEY GENERAL

FRED H. DAVIS.

ATTORNEY FOR RAILROAD COMMISSION

Hon. T. T. TURNBULL.

ATTORNEY FOR STATE ROAD DEPARTMENT

Hon. B. A. MEGINNISS.

ATTORNEY FOR TRUSTEES INTERNAL IMPROVEMENT FUND

Hon. MARVIN C. McINTOSH.

CIRCUIT COURT JUDGES

FIRST CIRCUIT—Hon. A. D. CAMPBELL, DeFuniak Springs.
FIRST CIRCUIT—Hon. THOMAS F. WEST, Milton.
SECOND CIRCUIT—Hon. EDWARD C. LOVE, Quincy.
SECOND CIRCUIT—Hon. J. B. JOHNSON, Tallahassee.
THIRD CIRCUIT—Hon. MALLORY F. HORNE, Jasper.
THIRD CIRCUIT—Hon. HAL. W. ADAMS, Mayo.
FOURTH CIRCUIT—Hon. GEORGE COUPER GIBBS, Jacksonville.
FOURTH CIRCUIT—Hon. DEWITT T. GRAY, Jacksonville.
DUVAL CIRCUIT—Hon. DANIEL A. SIMMONS, Jacksonville.
FIFTH CIRCUIT—Hon. W. S. BULLOCK, Ocala.
SIXTH CIRCUIT—Hon. O. L. DAYTON, Dade City.
SIXTH CIRCUIT—Hon. JOHN U. BIRD, Clearwater.
SIXTH CIRCUIT—Hon. T. FRANK HOBSON, St. Petersburg.
SEVENTH CIRCUIT—Hon. M. G. ROWE, Daytona Beach.
EIGHTH CIRCUIT—Hon. A. V. LONG, Gainesville.

NINTH CIRCUIT—Hon. D. J. JONES, Chipley.
TENTH CIRCUIT—Hon. H. C. PETTEWAY, Lakeland.
TENTH CIRCUIT—Hon. HARRY G. TAYLOR, Bartow.
ELEVENTH CIRCUIT—Hon. H. F. ATKINSON, Miami.
ELEVENTH CIRCUIT—Hon. W. L. FREELAND, Miami.
ELEVENTH CIRCUIT—Hon. ULY O. THOMPSON, Miami.
ELEVENTH CIRCUIT—Hon. PAUL D. BARNES, Miami.
TWELFTH CIRCUIT—Hon. GEORGE W. WHITEHURST, Arcadia.
THIRTEENTH CIRCUIT—Hon. F. M. ROBLES, Tampa.
THIRTEENTH CIRCUIT—Hon. L. L. PARKS, Tampa.
FOURTEENTH CIRCUIT—Hon. AMOS LEWIS, Marianna.
FIFTEENTH CIRCUIT—Hon. C. E. CHILLINGWORTH, West Palm Beach
SIXTEENTH CIRCUIT—Hon. J. C. B. KOONCE, Tavares.
SEVENTEENTH CIRCUIT—Hon. FRANK A. SMITH, Orlando.
EIGHTEENTH CIRCUIT—Hon. W. T. HARRISON, Palmetto.
NINETEENTH CIRCUIT—Hon. W. J. BARKER, Sebring.
TWENTIETH CIRCUIT—Hon. JEFFERSON B. BROWNE, Key West.
TWENTY-FIRST CIRCUIT—Hon. ELWYN THOMAS, Fort Pierce.
TWENTY-SECOND CIRCUIT—Hon. GEO. W. TEDDER, Fort Lauderdale.
TWENTY-THIRD CIRCUIT—Hon. W. W. WRIGHT, Sanford.
TWENTY-FOURTH CIRCUIT—Hon. FRED L. STRINGER, Brooksville.
TWENTY-FIFTH CIRCUIT—Hon. GEO. W. JACKSON, St. Augustine.
TWENTY-SIXTH CIRCUIT—Hon. A. Z. ADKINS, Starke.
TWENTY-SEVENTH CIRCUIT—Hon. PAUL C. ALBRITTON, Sarasota.
TWENTY-EIGHTH CIRCUIT—Hon. IRA A. HUTCHINSON, Panama City.

JUDGE OF THE COURT OF RECORD

ESCAMBIA COUNTY—Hon. C. MORENO JONES.

JUDGES OF THE CRIMINAL COURTS OF RECORD

DADE COUNTY—Hon. E. C. COLLINS.
DUVAL COUNTY—Hon. JAMES M. PEELER.
HILLSBOROUGH COUNTY—Hon. W. R. PETTEWAY.
MONROE COUNTY—Hon. J. VINING HARRIS.
ORANGE COUNTY—Hon. W. M. MURPHY.
PALM BEACH COUNTY—Hon. A. G. HARTRIDGE.
POLK COUNTY—Hon. H. K. OLLIPHANT.

JUDGES OF THE COURT OF CRIMES

DADE COUNTY—Hon. W. F. BROWN.
HILLSBOROUGH COUNTY—Hon. W. MARION HENDRY.

JUDGES OF THE CIVIL COURTS OF RECORD

DADE COUNTY—Hon. D. J. HEFFERMAN, Hon. JOHN C. GRAMLING.
DUVAL COUNTY—Hon. BURTON BARRS.
HILLSBOROUGH COUNTY—Hon. JULIAN HAZARD.

STATE ATTORNEYS

FIRST CIRCUIT—L. L. FABISINSKI, Pensacola.
SECOND CIRCUIT—GEORGE W. WALKER, Tallahassee.
THIRD CIRCUIT—J. R. KELLY, Madison.

FOURTH CIRCUIT—CHARLES M. DURRANCE, Jacksonville.

S. B. WILSON, Asst., Jacksonville.

FIFTH CIRCUIT—C. A. SAVAGE, Jr., Ocala.

SIXTH CIRCUIT—E. P. WILSON, Clearwater.

SEVENTH CIRCUIT—MURRY SAMS, DeLand.

EIGHTH CIRCUIT—J. C. ADKINS, Gainesville.

NINTH CIRCUIT—L. D. McRAE, Chipley.

TENTH CIRCUIT—C. A. BOSWELL, Jr., Bartow.

ELEVENTH CIRCUIT—VERNON HAWTHORNE, Miami.

HENRY M. JONES, Asst., Miami.

TWELFTH CIRCUIT—GUY M. STRAYHORN, Fort Myers.

THIRTEENTH CIRCUIT—CHARLES B. PARKHILL, Tampa.

V. R. FISHER, Asst., Tampa.

FOURTEENTH CIRCUIT—J. FRANK ADAMS, Blountstown.

FIFTEENTH CIRCUIT—L. R. BAKER, West Palm Beach.

SIXTEENTH CIRCUIT—J. W. HUNTER, Tavares.

SEVENTEENTH CIRCUIT—C. A. BOYER, Orlando.

EIGHTEENTH CIRCUIT—DEWEY A. DYE, Bradenton.

NINETEENTH CIRCUIT—L. GRADY BURTON, Wauchula.

TWENTIETH CIRCUIT—GEO. G. BROOKS, Jr., Key West.

TWENTY-FIRST CIRCUIT—ANGUS SUMNER, Fort Pierce.

TWENTY-SECOND CIRCUIT—LOUIS F. MAIRE, Fort Lauderdale.

TWENTY-THIRD CIRCUIT—MILLARD S. SMITH, Titusville.

TWENTY-FOURTH CIRCUIT—M. C. SCOFIELD, Inverness.

TWENTY-FIFTH CIRCUIT—JULIAN C. CALHOUN, Palatka.

TWENTY-SIXTH CIRCUIT—H. V. KNIGHT, Starke.

TWENTY-SEVENTH CIRCUIT—WINDER H. SURRENCY, Sarasota.

TWENTY-EIGHTH CIRCUIT—C. R. MATHIS, Panama City.

County	County Seat	County Judges	Prosecuting Attorney	County Solicitors	Clerk Circuit Court	County Attorney	Sheriffs
Alachua	Gainesville	B. D. Hiers	S. L. Scruggs		Geo. E. Evans	Fred D. Bryant	R. J. Wells
Baker	Maccleddy	W. R. Rhoden			W. C. Thompson		Joe Jones, Jr.
Bay	Panama City	C. S. Russ	A. M. Douglas		H. A. Pledger	A. M. Douglas	O. E. Hobbs
Bradford	Starke	Geo. A. Gardner	A. S. Crews		G. W. Alderman	A. S. Crews	W. J. Errerson
Brevard	Titusville	W. C. Sollins			N. T. Froscher	L. C. Crofton	R. F. Roberts
Broward	Ft. Lauderdale	Fred B. Shippey	Robert J. Davis		Frank A. Bryan	John E. Morris	A. W. Turner
Calhoun	Blountstown	Chas. B. Brown	M. B. Knight		J. A. Peacock	Marion B. Knight	R. J. Flanders
Charlotte	Punta Gorda	W. R. Roberts	Earle D. Farr		W. T. Oliver	Earle D. Farr	J. H. Lipscomb
Citrus	Inverness	Allan McFarlane			Claude Connor		Chas. S. Dean
Clay	Green Cove Spgs	G. W. Geiger	Joe Jennings		L. T. Ivey	W. G. Geiger	J. P. Hall
Collier	Everglades	Nathan Cockrell			E. W. Russell	Nathan Cockrell	L. J. Thorpe
Columbia	Lake City	Guy Gillen	G. A. Bule, Jr.		J. L. Markham	G. A. Bule, Jr.	W. B. Douglass
Dade	Miami	W. F. Blanton	None	G. E. McCaskill	E. B. Leatherman	Hudson & Cason	M. P. Lehman
DeSoto	Arcadia	Gordon Hays	L. J. Robbins		R. E. Moyer	Jones & Smiley	J. L. Hampton
Dixie	Cross City	E. M. Barber	McKirmey & Edwards		L. L. Barber	McKirmey & Edwards	Wm. M. Mills
Duval	Jacksonville	John W. DuBose	None	L. D. Howell	L. G. Hitchcock	Roswell King	W. B. Cahoon
Escambia	Pensacola	Robert P. Stout	None	R. H. Merritt	Langley Bell	Forsyth Caro	Mose Penton
Flagler	Bunnell	Geo. R. Benson	H. A. Henderson		Dale B. Brown	H. A. Henderson	J. H. McKnight
Franklin	Apalachicola	F. B. Wakefield			W. P. Dodd	R. Don McLeod, Jr.	W. J. Lovett
Gadsden	Quincy	Paul S. Thompson	O. J. Clayton		F. F. Morgan	E. P. Gregory	G. Scott Gregory
Gilchrist	Trenton	M. G. Akins	None		W. Alton Gay		A. D. Fields
Glades	Moore Haven	R. C. Vorhees	J. M. Couze		Mrs. D. S. Weeks	B. A. Bales	J. J. Wiggins
Gulf	Wewahitchka	M. H. Chafin	E. Clay Lewis, Jr.		J. R. Hunter	E. Clay Lewis, Jr.	J. E. Pridgeon
Hamilton	Jasper	B. B. Johnson	E. C. Rutledge		W. A. Lewis	E. C. Rutledge	W. R. Hunter
Hardee	Wauchula	F. G. Jones	S. D. Williams		S. W. Conroy	S. D. Williams	C. S. Dishong
Hendry	LaBelle	Chas. O. Ross	Walter W. Preston		Wm. T. Hull	Walter W. Preston	R. H. Hancock
Hernando	Brooksville	John Whitehurst	Anna Jo Law		H. C. Mickler	Anna Jo Law	W. D. Cobb
Highlands	Sebring	M. O. Whitehurst	J. M. Lee		L. T. Farmer	J. M. Lee	O. E. Wolff
Hillsborough	Tampa	Geo. H. Cornelius	None	Wm. J. Skinner	W. A. Dickenson	Tillman & Reeves	R. T. Joughin
Holmes	Bonifay	J. R. Carswell	A. W. Weeks		J. W. Vanlandingham	A. W. Weeks	W. B. Driver
Indian River	Vero	Otis M. Cobb	Geo. W. Walters		Miles Warren	C. P. Diamond	Clark S. Rice
Jackson	Marianna	D. H. Oswald	E. C. Welch		H. A. Bowles	E. C. Welch	A. J. Lewis
Jefferson	Monticello	Thos. B. Bird	Malcolm Johnson		C. H. Sauls	S. D. Clarke	G. C. Allman
Lafayette	Mayo	E. S. Winburn	Lester Summersill		C. W. Edwards	Lester Summersill	N. Pearson
Lake	Tavares	E. M. Tally	W. M. Kennedy		Geo. J. Dykes	J. W. Hunter	B. A. Cassidy
Lee	Fort Myers	L. Y. Redwine	C. Q. Stewart		J. F. Garner	Roy D. Stubbs	F. B. Tipples
Leon	Tallahassee	W. T. Moore, Jr.	Clyde Atkinson		Paul V. Lang	Wm. Blount Myers	Frank Stoutamire
Levy	Bronson	J. C. Sale	None		L. W. Drummond	John B. Willis	W. B. Whiddon
Liberty	Bristol	W. R. Owens	M. B. Knight		W. H. Walker		E. A. Chestang
Madison	Madison	Columbus B. Smith	R. C. Horne		D. F. Burnett, Jr.	R. H. Rowe	G. L. Morrow
Manatee	Bradenton	W. H. Tucker			Robt. H. Roesch	J. Ben Fuqua	Jas. P. Davidson
Marion	Ocala	L. E. Futch	N. F. Baskin		T. D. Lancaster	E. H. Martin	S. C. M. Thomas
Martin	Stuart	E. J. Smith, Jr.	A. R. Clonts		J. R. Pomeroy	R. R. Roebuck	Marion M. McGee
Monroe	Key West	Hugh Gunn		J. F. Busta	Ross C. Sawyer	Wm. V. Albury	Cleveland Niles

County	County Seat	County Judges	Prosecuting Attorney	County Solicitors	Clerk Circuit Court	County Attorney	Sheriffs
Nassau	Fernandina	H. V. Burgess	Hinton J. Baker		G. C. Burgess	Hinton J. Baker	A. J. Hugginbotham
Okaloosa	Crestview	L. H. Hughes	Puri G. Adams		Allen T. Carr	Puri G. Adams	L. H. Hughes
Okeechobee	Okeechobee	C. W. Durrance	T. W. Conely, Jr.		Josh L. Barber	T. W. Conely, Jr.	Wm. Collins
Orange	Orlando	Victor Hutchins	None	O. Ray Ellars	B. M. Robinson	W. L. Tilden	Frank Karel
Osceola	Kissimmee	J. F. Robinson	L. R. Rogers		J. L. Overstreet	W. J. Steed	L. R. Farmer
Palm Beach	West Palm Beach	Richard P. Robbins	None	W. E. Roebuck	Fred E. Fenno	D. L. Southard	R. C. Baker
Pasco	Dade City	J. W. Sanders	W. K. Barnes		A. J. Burnside	Arthur L. Auvil	C. E. Dowling
Pinellas	Clearwater	Harry R. Hewitt	C. A. Davis		Karl B. O'Quinn	John C. Blocker	Roy Booth
Polk	Bartow	C. M. Wiggins	None	J. H. Peterson	J. D. Raulerson	M. D. Wilson	J. A. Johnson
Putnam	Palatka	C. H. Kennerly	C. S. Green		W. A. Williams, Jr.	C. S. Green	R. C. Howell
Santa Rosa	Milton	W. A. McLeod	M. F. Caldwell		T. W. Jones	M. F. Caldwell, Jr.	Henry C. Mitchell
Sarasota	Sarasota	Arthur R. Clarke	T. L. Gienn, Jr.		J. R. Peacock	Surency & Keen	W. A. Keen
Seminole	Sanford	Jas. G. Sharon	J. G. Leonardy		V. E. Douglass	H. S. White	J. F. McClelland
St. Johns	St. Augustine	John P. Baker	W. A. McWilliams		Obe P. Goode	W. A. McWilliams	E. E. Boyce
St. Lucie	Fort Pierce	A. C. Brown	H. J. Dame		P. C. Eldred	F. L. Hemmings	B. A. Brown
Sumter	Bushnell	T. J. Dempsey			Roy Caruthers	S. W. Getzen	W. T. Coleman
Suwannee	Live Oak	A. C. Johnson	J. L. Blackwell		J. W. Bryson	J. L. Blackwell	W. H. Lyle
Taylor	Perry	Jno. O. Cuiepper			Jas. R. Jackson	T. J. Swanson	F. L. Lipscomb
Union	Lake Butler	Hal Y. Maines	Joe Hill Williams		S. T. Dowling	Joe Hill Williams	W. S. Brannen, Jr
Volusia	DeLand	J. E. Peacock	Elmer Jones		Sam'l D. Jordan	W. J. Gardiner	S. E. Stone
Wakulla	Crawfordville	Raney Whaley	A. L. Porter		L. L. Pararo	A. L. Porter	Angus Morrison
Walton	DeFuniak Spgs	J. W. Mathison	D. Stuart Gillis		Marcus T. Fountain	D. Stuart Gillis	Thad Bell
Washington	Chipley	Sam D. May	H. S. Bailey		J. A. Douglas	H. S. Bailey	H. M. Farrior

VI.

LETTER OF TRANSMITTAL

STATE OF FLORIDA

Attorney General's Office.

Tallahassee, Florida, Jan. 1, 1931.

To His Excellency, Honorable Doyle E. Carlton,
Governor of Florida.

SIR:

Section 27 of Article IV of the Constitution of the State of Florida provides that each officer of the Executive Department shall make a full report of his official acts, of the receipts and expenditures of his office, and of the requirements of the same, to the Governor at the beginning of each regular session of the Legislature or whenever the Governor shall require it, and that such Report shall be laid before the Legislature by the Governor at the beginning of each regular session thereof.

Pursuant to the requirements of the Constitution above referred to, I have the honor to herewith submit the Report of the Attorney General covering the period of time prior to the date of this Report and subsequent to the date of the last preceding Report, that is to say, covering the period from January 1st, 1929, to and including December 31, 1930.

Respectfully submitted,

FRED H. DAVIS,

Attorney General

VII.

REPORT OF THE ATTORNEY GENERAL

Nature of the Report.

By long established practice the Report of the Attorney General is usually rendered just prior to the convening of each regular session of the Legislature, and covers the period of the two calendar years which precede the year in which the regular session of the Legislature convenes.

This Report therefore covers the period beginning January 1, 1929, and ending January 1, 1931.

SCOPE OF ATTORNEY GENERAL'S DUTIES

The office of Attorney General has existed from an early period, both in England and in this country, and is vested by the common law with a great variety of duties in the administration of the government.

These duties are so numerous and varied that it has not been the policy of the legislatures of the several states of the Union to attempt specifically to enumerate them; and where the question has come up for consideration it is generally held that the office is clothed, in addition to the duties expressly defined by statute, with all the power pertaining thereto under the common law.

As the chief law officer of the State, the Attorney General may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may from time to time require. In giving his advice and opinions on questions of law to the Governor and various heads of departments of the State, his duties are regarded by law as quasi judicial. His opinions, officially define the law in a multitude of cases where in practice his decision is final and conclusive, not only as respects the actions of the public officers themselves in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts, but also in questions of private rights, inasmuch as parties having concerns with the State government possess in many instances no means of bringing a controverted matter before the courts of law where they can obtain a purely judicial legal decision of the controversy as distinguished from an administrative one only by reference to the Attorney General.

In the recent case of *State ex rel Davis, Attorney General, vs. Love*, Circuit Judge, decided by the Supreme Court of Florida on February 14, 1930, and reported in 126. So at page 374, the Supreme Court in speaking of the office of Attorney General said:

"The Attorney General is the attorney and legal guardian of the people, or of the crown, according to the form of government. His duties pertain to the Executive Department of the State, and it is his duty to use means most effectual to the enforcement of the laws, and the protection of the people, whenever directed by the proper authorities, or when occasion arises.

"Our Legislature has not seen fit to make any change in the common law rule. The office of the Attorney General is a public trust. It is a legal presumption that he will do his duty, and that he will act with strict impartiality. In this confidence he has been endowed with a

large discretion, not only in cases like this, but in other matters of public concern. The exercise of such discretion is in its nature a judicial act, from which there is no appeal, and over which the courts have no control. 3 Abbot, 131."

In an interesting case decided by the Supreme Court of Illinois (Saxby vs Sonnemann, 149 N E 526), it was said:

"The Constitution confers no express powers upon the Attorney General and prescribes no express duties for him. It provides that he shall perform such duties as may be prescribed by law. The office of Attorney General was one known to the common law, and under it he had well known and well defined powers. It was not necessary to enumerate all the powers vested in the Attorney General or include them in the Constitution. The Attorney General is the chief law officer of the State, and in the creation of that office there was ingrafted upon it all the powers and duties of the Attorney General as the same were known at common law. * * *

"It is, of course, easily seen that in a great State such as this the multiplicity of duties of the Attorney General forbid personal attention to all of them. He must, and does, have power to appoint the necessary deputies or assistants to aid in carrying out those duties."

In another case of interest from the State of Nebraska, (Follmer vs. State, 142 N W 908), it was held:

"The Attorney General is, generally speaking, the attorney for the State. It is his duty to devote his time and energies to that employment, as it is the duty of attorneys generally to appear and defend the rights of their clients in the litigation in which they are employed. He is given executive powers in regard to various matters committed to his care."

In the same case it was also said:

"The Attorney General is the attorney for the State, and the officers who by the Constitution and laws are given charge of the affairs of the State may call upon him for advice upon questions of law which arise in the discharge of their duties."

CONSTITUTION AND STATUTES RELATING TO DUTIES

For information there is quoted herewith the following portions of the Constitution and statutes of the State of Florida directly pertaining to the duties and powers of the Attorney General in this State:

"The Attorney General shall be the legal adviser of the Governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the Supreme Court." (Section 22, Article IV. Constitution.)

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to

in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of the State; he shall appear in and attend to such suits or prosecutions in any other of the courts of the State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof." (Section 125, Comp. Laws, 1927.)

"In case of the disability of the Attorney General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or Attorney General of this State may appoint another person to perform such duty in his stead." (Section 126, Comp. Laws, 1927.)

"The Attorney General shall prepare marginal abstracts to the several sections and a general alphabetical index to the entire general acts and resolutions of each session of the Legislature as soon as practicable after the adjournment thereof, and also an index to the local acts and an index to each of the journals of the two branches of the Legislature. Such acts and resolutions and forms of proceedings thereunder prepared by the Attorney General shall be published under his direction." (Section 127, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General at the convening of each session of the Legislature of this State, or as soon thereafter as possible, to recommend a person experienced in indexing, to supervise and assist the respective clerks of each branch of the Legislature having such work in hand, in making the index for both journals. His compensation shall be fixed by the Legislature as other attaches and he shall have as many days as the Legislature may designate by resolution after the close of each session for completing and presenting his work for approval by the Attorney General, who is authorized to approve such index if found correct, before the payment shall be made for the extra days allowed after the close of the Legislature." (Section 128, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the court thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the Legislature by the Governor with his first message." (Section 129, Comp. Laws, 1927.)

"It shall be a misdemeanor in office for the Attorney General to take

or receive any fee for defending any supposed offender in any of the courts." (Section 130, Comp. Laws, 1927.)

"The Attorney General shall exercise a general superintendence and direction over the several State Attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State Attorneys, shall give them his opinion upon any question of law." (Section 131, Comp. Laws, 1927.)

"The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him by State Attorneys, and it shall be their duty to comply with his instructions in this respect." (Section 132, Comp. Laws, 1927.)

"The Clerk of the Supreme Court is hereby directed to deliver to the Attorney General a copy of each volume or part of volume of the decisions of the Supreme Court of Florida, which may be in the care or custody of said Clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in his office at the capitol, and each retiring Attorney General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office: Provided, that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said Court." (Section 133, Comp. Laws, 1927.)

"The Attorney General is required to prepare and cause to be printed a sufficient number of copies of fee bills of the various officers of the several counties of this State, and send, or cause to be sent, copies of said fee bills to all county officers in this State. Such officers shall keep posted in a conspicuous place in their office such fee bills, for the information of persons having business with them." (Section 4677, Comp. Laws, 1927.)

In addition to the duties embraced in the foregoing sections of the statutes, other provisions of law make it the duty of the Attorney General to approve the bond of the Comptroller (Sec. 140), of the Shell Fish Commissioner (Sec. 1844), prosecute combinations against Florida meats (Sec. 7076), and investigate and rectify commercial discriminations (Secs. 3940-3943), enjoin violations of the laws regulating commercial feed stuffs (Sec. 3259), conduct condemnation proceedings on behalf of Board of Commissioners of State Institutions (Sec. 5105) and on behalf of the Adjutant General's office for military purposes (Sec. 2054), approve article of incorporation for co-operative marketing associations (Sec. 6473), examine and pass on statements filed by investment companies (Sec. 5997), bring proceedings to forfeit charters of corporations which violate the laws or fail to comply with mandatory requirements of same (Sec. 7946), enforce the anti-trust laws of the State (Sec. 7946), pass upon revocation of licenses of investment companies (Sec. 6001), bring proceedings to annul franchise of corporations not for profit under certain conditions (Sec. 6505), approve title to real estate in which the State is interested (Sec. 2399), pass upon permits of associations doing business under a declaration of trust (Sec. 7093), represent the State in disbarment proceedings in the Supreme Court (Sec. 4176), pass upon

and approve regulations of district drainage boards (Sec. 1494), certify Everglades Drainage District bonds (Sec. 1555), bring proceedings against fair associations for annulment of their charters when laws relating to same are violated (Sec. 6524), prepare and publish copies of opinions of the Supreme Court (Secs. 4713, 1983) and act as reporter for the Supreme Court (Sec. 4714), participate in hearings on prosecutions instituted against violators of pure food and drug laws (Sec. 3201), prepare forms for hunting licenses (Sec. 1898), furnish indexes to laws and journals of the Legislature (Sec. 1983), conduct proceedings against insolvent or defaulting insurance companies (Sec. 6202, 6228), conduct all quo warranto proceedings (Secs. 5446, 8162), act as attorney for the Railroad Commission (Secs. 6720, 6732, 6734, 6747, 6751) although this work is negligible because of a provision for the Railroad Commission to employ special counsel under Section 6732; attend all legal business arising in connection with the laws governing the salt water fishing industry (Sec. 1846), prepare bond of contractor for uniform school books (Secs. 860-861), pass upon legality of and give approval to all investments of school district sinking funds in purchases of bonds (Sec. 736), devise and furnish a form of seal for all the courts of the State (Sec. 4881), bring proceedings for annulment of franchises of social clubs under certain conditions (Sec. 6505), control and supervise acts of special assistants to the Attorney General who are not part of the Attorney General's office force, being directly responsible to and appointed by the Governor for special work (Secs. 134-135); give special attention to legal proceedings in connection with the sponge fishing industry (Sec. 1886), conduct suits on bonds of State health officer (Sec. 3170), act as legal advisor and attorney for State Plant Board (Sec. 3833), act as legal advisor for State Road Department (Sec. 1639) which has, however, a special attorney who acts for it in ordinary cases; sue to recover fines for doing business without a license (Sec. 7450), bring suits to restrain the advertisement of liquors (Sec. 7600); conduct prosecutions against defaulting and delinquent surety companies (Sec. 6296), assist in fixing values of securities deposited with State Treasurer by trust companies under the Trust Act (Sec. 6131), enforcement of vital statistics law (Sec. 3293), as well as attend to a multitude of administrative duties as member of various boards and answer numerous inquiries from State, county and municipal officers as matters of information.

As has been pointed out, to the foregoing should be added the duties imposed on the Attorney General directly by Sections 125 to 132 of the Compiled Laws of 1927, as well as the undefined duties imposed by the common law.

MEMBERSHIP ON VARIOUS BOARDS

By virtue of constitutional and statutory provisions the Attorney General is a member of the following State boards:

One of the five members of the State Board of Pardons.
(Sec. 12, Art. IV, Const.)

One of five members of the State Board of Education. (Sec. 12, Art. III, Const.)

One of the seven members of the Board of Commissioners of State Institutions. (Sec. 17, Art. IV, Const.)

One of five members of Board of Drainage Commissioners. (Sec. 1524, Comp. Stats.)

One of three members of State Board of Canvassers of Election Returns. (Sec. 348.)

One of seven members of State Budget Commission which prepares State budget for general appropriation bill for each session of the Legislature. (Sec. 1366.)

One of three members of commission to examine into validity of State warrants dated prior to July 1, 1871. (Sec. 1361.)

One of two members of Investment ("Blue Sky") Board which passes on all licenses for foreign and domestic companies to sell securities in this State. (Sec. 7093.)

One of five members of the State Sinking Fund Commission to control sinking fund to retire State debt. (Sec. 1379.)

One of three members of State Tax Equalizing Board. (Sec. 1046.)

One of three members of Board for Assessment of Railroads, Telegraph and Telephone Companies. (Sec. 960.)

One of seven members of State School Book Commission to select uniform text books for schools of the State. (Sec. 852.)

One of five members Trustees Internal Improvement Fund which holds title to and disposes of all State lands other than school lands held by State. (Sec. 1385.)

One of three members of Board for Fixing Values of Investment Securities of Trust Companies. (Sec. 6131.)

One of five members State Vocational Educational Board. (Sec. 842.)

One of ten members of the Board of Commissioners of Everglades Drainage District. (Chapter 13633, Acts 1929.)

One of the ten members of the Okeechobee Flood Control District. (Chapter 13711, Acts 1929.)

One of the three members of the Delinquent Tax Adjustment Board of Appeals. (Chapter 14572, Acts 1929.)

One of the three members of the board for the supervision and regulation of forms to be used for the assumption of risk by surety companies. (Chapter 14489, Acts 1929.)

Of the above boards, the Trustees of the Internal Improvement Fund, State Board of Education, and Commissioners of State Institutions hold regular meetings once each week on Wednesdays.

The State Board of Pardons holds two regular meetings each year, one in March and the other in September, while the so-called "Blue Sky" Board will average about two meetings per month. The Railroad Assessment Board meets annually while the other boards meet at irregular times annually or biennially as called by their respective chairmen.

OFFICIAL OPINIONS

The Attorney General has been called upon to render to the Governor and members of the Administrative Department of the State government, as well as to the heads of various boards and commissions acting under State authority a large number of official opinions touching their respective powers and duties, copies of which opinions are preserved in the Attorney General's office, and a number of which will be found reproduced in this report for the information of the public at large.

By arrangement with the Florida State Bar Association, which publishes an official monthly magazine known as the "Florida Law Journal," copies of all important opinions of the Attorney General's office are sent to the editor for reprinting in the Law Journal if deemed of interest to the bar, and likewise copies of such opinions have been furnished to the publishers of the "Docket," which is the official publication of the clerks and other county officers' associations in the State.

In addition to furnishing written opinions of an official nature, the Attorney General has been frequently called into consultation by various other officers for legal advice relative to the various questions arising in their respective departments, and no small part of the duties of the office is that devoted to the investigations which are necessarily made by the Attorney General in order that he may properly and intelligently advise in such cases. Necessarily no record of this work can be made, but much of the time of the Attorney General personally and that of his two assistants is devoted to this class of work.

UNOFFICIAL OPINIONS

Beginning with the administration of Hon. W. H. Ellis as Attorney General, there began a gradual increase in what may be called the "unofficial" correspondence of the Attorney General's office.

County officials and even many private individuals make frequent inquiries of the Attorney General concerning various matters of law, some of which from their nature cannot be answered with an expression of opinion, but which, nevertheless, have to be acknowledged by reply sent to the party making the inquiry giving the reason why the answer cannot be made, where that is the case. In other cases, where deemed proper for such course, the Attorney General has written opinions on the propositions submitted, discussing reasons and citing legal precedents in court reports for the conclusions given.

In no instance has the Attorney General felt, when he answered a request for an opinion by giving one on the subject requested in a proper case, that he was warranted in giving what is commonly called a "curbstone" opinion on the subject inquired about, but in each instance has resorted to an examination of the legal precedents available in his library as a guide in formulating any opinion expressed, even though it was unofficial.

The following extract from the Report of the Attorney General dated March 28th, 1907, during the incumbency of former Attorney Gen-

eral Ellis, now a Justice of the Supreme Court, is pertinent to conditions as they have existed in this office during the past two years:

The official work of this department is constantly increasing. During the past two years the work which has devolved upon the Attorney General has far exceeded the work of any two years within the history of the office, so far as that history is shown by the records of this office. I think it would be within the exact truth to say that the work which now devolves upon the Attorney General is many times greater than it has ever been.

The unofficial correspondence which constitutes part of the semi-official business heretofore mentioned has demanded a large portion of my time. The Attorney General is appealed to for his opinion upon a great number of subjects relating to the duties of county officials and officers of cities and towns. In each letter received one or more questions of law were submitted, and each question required time for consideration. I have given these letters my personal attention and have endeavored to furnish accurate information to the authors, although in many cases it was exceedingly difficult to do so, by reason of the meager and unsatisfactory statement of the facts upon which advice was sought. This feature of the work of the Attorney General has been growing for several years, until it now amounts to a serious interference with the performance of those duties required by the Constitution and laws of the State.

While the Attorney General's office has always taken the position in regard to unofficial opinions of the character referred to, that the Attorney General was not charged with the duty of advising county, district and municipal officers, yet as a matter of courtesy to those making inquiry, and with a view of assisting, when possible, to a uniform administration of the laws regulating the conduct and prescribing the powers and duties of such officers, the Attorney General is constantly required to and does write a large number of what may be termed these unofficial opinions, a number of those rendered during the past two years being incorporated in this report.

One of the requirements of Section 125, Compiled Laws of 1927, is that the Attorney General "shall have and perform all powers and duties incident or usual to such office" and it may now be said that in spite of the position in regard to these unofficial opinions which have been insisted upon by the various Attorneys General who have had to deal with the situation, to the effect that it was no part of the duties of the Attorney General to give legal advice to county, district and municipal officers, it nevertheless by custom and practice has become an established part of the duties of the Attorney General *in fact*, whether in law or not, and the performance of this function may now almost be said to be covered by the terms of the statute above referred to, namely, that these requests for unofficial opinions in proper cases shall be investigated and answered as a power and duty incident and usual to the Attorney General's office as it is now viewed by the various State, County,

municipal and district officials, as well as by the majority of the citizens, of this State.

CLERICAL ASSISTANTS

In connection with the rendition of this report, the Attorney General deems it proper to call attention to the fact that the volume of work which has been successfully turned out by the Attorney General during the past two years has only been made possible through the faithful efforts of three competent law clerks who are trained stenographers as well, and who have devoted many extra hours to the burden of preparing in typewritten form the many briefs and letters, opinions and legal documents which are prepared in this office by the Attorney General and his two Assistant Attorneys General.

Owing to the circumstances under which this work has had to be accomplished, it has been necessary that both the Attorney General and his clerical aids work many hours in this office after all other Departments in the Capitol were closed, in order that the work to be done might not be unduly delayed.

In many instances the work in question has been done at night, for which time no extra compensation was paid, although many extra hours of labor were involved.

While it is the standing custom to observe Saturday half holidays for all State employes, the realization of this custom by the clerical assistants employed in the office of the Attorney General has many times been found to be impossible because of the work which was required to be done in order to prevent congestion.

At this time the following persons are employed in the office of the Attorney General in the capacity of law clerks and clerical assistants:

Mrs. Allie Yawn Brown, Chief Law Clerk and Bookkeeper.

Mrs. Margaret E. Gannon, Law Clerk.

Miss Evelyn Davis, Law Clerk.

Miss Bessie Thorne, Stenographer.

During the period covered by this report the following have been employed at various times or on special occasions:

Miss Anna R. Bray,

Miss Genevieve Bledsoe,

Mrs. Leah Battle, Law Clerks.

Mrs. J. C. Newton,

Miss Leola Sauls,

Mrs. Charles N. Hobbs,

Miss Frances Brown,

Stenographers.

Jerry W. Carter, Jr., Clerical Assistant.

The names of these employees are mentioned in grateful acknowledgement of the efficient and faithful service rendered by them, which has made the work of this Department possible of successful accomplishment.

ASSISTANT ATTORNEYS GENERAL

The time of the Attorney General personally is occupied with the consideration of the more important civil cases, performance of administrative duties incident to the office of Attorney General, and in the investigation and answering of requests for official and unofficial opinions on the various propositions of law which are constantly being submitted to him.

The Attorney General in person is also frequently called upon to go to various parts of the State to transact business of an official nature in the public interest, as well as appear before the courts in many oral arguments on important matters of litigation of vital interest to the State or to some class of its citizens.

The result is that most of the criminal cases passing through the Attorney General's Office are handled by the Assistant Attorneys General, who must spend many hours examining records, reading briefs filed by opposing counsel, and in preparing rebuttal briefs to be filed for the State in support of affirmance of the judgments appealed from. It is also necessary that they appear in the Supreme Court and make many oral arguments during the year in criminal cases in which oral arguments are requested before that tribunal.

This report would not be complete without calling attention to the helpful co-operation and valuable services rendered in the Attorney General's Office during the past two years by the two Assistant Attorneys General, Hon. H. E. Carter and Hon. Roy Campbell, who have ably assisted the Attorney General in the discharge of his duties and in the fulfillment of the requirements of the rules of court which make necessary the examination and briefing of every case in the Supreme Court, civil and criminal, where the State is a party in interest.

Prior to the convening of the 1929 Legislature, Hon. A. H. Williams of Tallahassee, Hon. Wallace Tervin of Bradenton, and Hon. J. McHenry Jones of Pensacola, acted as special assistants to the Attorney General under the provision of Chapter 11828, Acts of 1927, Laws of Florida, which provide for the appointment of three special prosecuting attorneys for the State at large to be known as special assistants to the Attorney General, and who were appointed by the Governor and confirmed by the Senate for the periods of four years.

While these officers were directly appointed by the Governor and were only nominally connected with the office of Attorney General, it is deemed proper to call attention to the efficient service rendered by them during the period in which they served prior to the repeal of the 1927 Act under which they were appointed.

REPORTER FOR SUPREME COURT

The task of acting as reporter for the Supreme Court is imposed on the Attorney General by the Constitution. Its satisfactory performance involves more detailed work than one would ordinarily imagine.

Opinions furnished by the Supreme Court to its official reporter frequently have citations of cases omitted which have to be supplied by research and interlineation of the book and page where same may be found. This occurs in each and every instance where the Supreme Court

cites a case decided by it at its current term and is at the time unable to give the book and page of same because at the time the opinion is handed down the Florida Report in question cited has not been printed so as to make the information available to the Court. All such citations have to be later looked up and supplied in the text by the Attorney General, who is likewise required to make an index digest of the cases in each volume of the Supreme Court Reports before it can be printed.

During the two years covered by this report the Attorney General has acted as reporter for the following volumes of the Florida Supreme Court reports, namely: Vols. 97, 98, 99, 100.

A great degree of care must be exercised in this work, as the opinions filed by the Court are expected to be accurately reproduced in the reports. The Court also expects the Attorney General to insert in the report a cross reference index of where each case reported may be found in the Southern Reporter, and this requirement has invariably been met by the Attorney General's Office which has supplied these references after much labor and research, as each case must be separately looked up and the book and page of the Southern Reporter wherein same may be found carefully noted and checked.

PUBLISHING ACTS AND RESOLUTIONS OF LEGISLATURE

The Acts and Resolutions of the Legislature of this State for the regular and special sessions of 1929 were published, with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the journals of each branch of the Legislature were also prepared under the direction of this office, the index to the journals having been prepared as provided by Section 128 (104) Compiled Laws of 1927.

CIVIL CASES

During the past two years many new and unusual civil cases, mostly involving State tax matters, have been started against the State or have been necessary to be instituted by the State for the protection of its sovereign rights. A detailed list of these cases with the status of each and its result will be found in this report under the heading "Schedule of Civil Cases."

An unusual feature of the litigation which has been had during the past two years has been the number of cases filed in the Federal courts, in which it has been necessary for the Attorney General to appear on behalf of the State.

The most outstanding of these cases was one wherein the State of Florida filed suit in the Federal Court for the Northern District of Georgia to enjoin the enforcement of an order made by the Interstate Commerce Commission, which seriously jeopardized Florida lumber manufacturers by casting upon them an unreasonable and unnecessary burden of increased freight rates at the instance of the Georgia Public Service Commission, which filed and prosecuted its complaint before the Interstate Commerce Commission for the purpose of producing such result.

This case was heard twice before a Statutory Court of Three Judges at New Orleans; once before the Circuit Court of Appeals at New Orleans; once before the Circuit Court of Duval County at Jacksonville; once be-

fore the United States District Judge for the Northern District of Florida; once before the United States District Judge for the Southern District of Florida; once on an application for a mandamus against the District Judge in the Supreme Court of the United States; and was finally argued before the Supreme Court of the United States on its merits on an appeal from an adverse decision rendered in the case which will be found reported under the title, *State of Florida vs. U. S. 30 Fed (2nd) 116, 31 Fed (2nd) 580*.

As a result of this litigation the State was successful in having the order of the Interstate Commerce Commission declared invalid, and the rights of the State upheld in a sweeping opinion rendered by Chief Justice Hughes, which will be reported in U. S. Supreme Court opinions, Vol 281.

Another Federal Court case heard before a Statutory Court of Three Judges involved the constitutionality of the 1929 milk law, and resulted in a decision in favor of the State. This case will be found reported under the title *Noble vs. Carlton, 36 Fed. (2nd) 967*.

Still another Federal case of unusual interest decided by the Circuit Court of Appeals in favor of the State during the past two years, was that of *Bank of Bay Biscayne and Ernest Amos, Comptroller, vs. Hankins, 42 Fed (2nd) 209*, in which the Circuit Court of Appeals held that a United States District Court was without jurisdiction to assume jurisdiction over and appoint a receiver for a State bank being liquidated by the State banking authorities.

A similar case in the Federal courts involving the right to place a building and loan association in bankruptcy after it had been taken over by the State Banking Department for purposes of liquidation resulted in a decision by the Circuit Court of Appeals for the Fifth Circuit in favor of the State of Florida, which will be found reported under the title *Curtis vs. Dade County Security Company, 30 Fed (2nd) 325*.

There is now pending before a Federal Statutory Court of Three Judges an injunction suit filed in the case of *Alkazin vs. Florida Railroad Commission* to have declared invalid Chapter 13700, Acts of 1929, providing for the supervision and taxation of motor carriers. No decision has been rendered in this case which was argued at New Orleans on January 1st.

The case of *Smith vs. Cahoon*, involving the constitutionality of the same act was originally brought in the State court, and the act upheld by the Supreme Court of Florida in a decision reported under the title *Cahoon vs. Smith, 128 So. 632, 99 Fla. 1174*.

An appeal has been taken from the decision of the Supreme Court of Florida in favor of the validity of the law, and the case is now pending to be heard on this appeal in the Supreme Court of the United States sometime during the month of April, 1931.

During the past two years the Attorney General filed a brief in the Supreme Court of the United States on behalf of Florida citrus interests in the case of *American Fruit Growers, Inc., vs. Brogdex Company*, to have invalidated if possible an alleged patent right claimed by the Brogdex Company against Florida citrus interests, which would prevent their using a borax wash on citrus fruits as a preventative for blue mould decay in oranges. The Attorney General also succeeded in interesting the

Attorney General of the States of Alabama, Arizona, California, Georgia, Louisiana and Texas to join in the fight by signing the brief with the Attorney General of Florida.

In the case of O. G. Denman, Administrator, vs. W. L. Slayton, the Attorney General filed a brief in the Supreme Court of the United States as amicus curiae in support of an attack being made upon the application of a certain provision of the Federal income tax against dealers in Florida bonds, which if sustained would have the effect of depreciating the sale value of bonds to bond dealers.

Neither of the foregoing cases has yet been decided by the United States Supreme Court, but both have been submitted.

In the State Supreme Court the Attorney General has participated in litigation involving the constitutionality of the 1929 gasoline tax laws (Amos vs. Matthews, 126 So. 308), as well as in numerous other suits making attacks upon acts of the Legislature passed in 1929 and previous years.

In each instance the Attorney General has given these important matters of litigation his personal attention, and has appeared in and made personal arguments before the courts in which the cases were heard.

A complete tabulation of all civil cases in which the State was a party, or in which the State was directly or indirectly interested during the past two years, will be found in an appropriate place in another part of this Report.

CRIMINAL CASES

Every criminal and habeas corpus case in the Supreme Court is handled on the part of the State by the Attorney General. The rules require briefs on behalf of the State to be filed in all such cases, and in accordance with such rules briefs have been prepared and filed in the Supreme Court, and oral arguments made in every case requiring the same which has been heard during the past two years.

A list of such cases with their disposition is given in this Report under an appropriate heading.

Perhaps the most outstanding criminal case which was argued on behalf of the State by the Attorney General during the past two years was that of *Forrest Lake vs. the State*, 129 So. 827, in which the Supreme Court upheld the right of the Attorney General to petition for a rehearing of four cases in which all the convictions of the defendant Lake for violation of the banking laws had been reversed. Upon such rehearing the Attorney General was able to obtain a revision of the previous opinions of the Supreme Court in these cases to the extent of having one of the convictions affirmed.

Another important case was that of *Buchanan vs. the State*, 130 So. Ref., in which was upheld the constitutional validity of Chapter 9169, Acts of 1923, Laws of Florida, providing for the substitution of electrocution in place of hanging as a means of the infliction of the punishment of death. The Circuit Court had declared the law unconstitutional, but the judgment so holding was reversed on an appeal taken by the Attorney General to the Supreme Court.

EXAMINATION AND APPROVAL OF ABSTRACTS OF TITLE

In any case where property is conveyed to the State of Florida or any of its institutions, it is necessary that the abstracts of title to the property be submitted to and examined and approved by the Attorney General before the purchase is completed. The performance of this task during the past two years has occupied no inconsiderable portion of the time of the Attorney General and his Assistants.

In addition to examining abstracts of title to property proposed for convenience to the State, the Attorney General is constantly being called upon to examine abstracts of title to lands covered by mortgages which are deposited with the State Treasurer as securities under the Trust Act, as provided for by Section 6131 (4188), Compiled General Laws.

No mortgage is accepted as security by the State Treasurer for deposits under the Trust Act until the title to the land covered thereby has first been examined and approved by the Attorney General, and the volume of such examinations during the past two years has been unusually great.

EXTRADITION MATTERS

It has now become the settled policy of the Governor to refer to the Attorney General for examination and approval every application for extradition of fugitives from justice, applied for by officers of this state to secure the return of prisoners from other states, as well as applied for by officers of other states to secure return of prisoners from Florida.

In many cases hearings are requested on applications to the Governor of Florida to grant requisitions from other states for the return of prisoners from this state to a demanding state, and the invariable rule is that such hearing must be conducted by the Attorney General or one of his Assistant Attorney Generals.

The time required for conduct of hearings and for submission of written recommendations to the Governor concerning the cases heard, has occupied no little time of this office during the past two years.

OFFICE FURNISHINGS AND LIBRARY

During the past two years the Attorney General has been fortunate, with the limited funds appropriated for that purpose, to procure new furnishings for the offices occupied by this Department. This was made possible by purchase made at a bankrupt sale by the Receiver of a large office furnishing concern which had gone into liquidation.

The Attorney General has also been able to have the extensive Library in the office of the Attorney General properly catalogued and the books arranged in bookcases in regular order, so that any volume can be readily found according to alphabetical arrangement. A complete list of all volumes in the library has been prepared and is now available in the office for the first time since the Library was established.

During the past two years the Attorney General has also been fortunate in obtaining for the state, to be kept upon the walls of the offices in the Capitol occupied by the Attorney General, enlarged portraits of former Attorneys General who have served as such since its admission into the Union as a state. The portraits add much to the appearance of the offices, and are of historical value to preserve the

likenesses of those who have in the past rendered faithful services to the state in this office.

An attempt will be made in the next two years to obtain portraits of former Assistant Attorneys General to be placed upon the walls of the offices occupied for the present Assistant Attorneys General.

COUNSEL FOR TRUSTEES INTERNAL IMPROVEMENT FUND

The Attorney General must necessarily work in co-operation with the Special Counsel (Hon. Marvin C. McIntosh) of the Trustees Improvement Fund of which the Attorney General is a member.

The office occupied by Counsel for the Trustees of the Internal Improvement Fund is located adjacent to those of the Attorney General, and I am happy to report that a most cordial relationship exists between the Special Counsel and the officials and employees of this office.

COUNSEL FOR RAILROAD COMMISSION

The Railroad Commission, pursuant to law, is provided with Special Counsel selected by the Commission and charged with the duty of devoting his entire time to the business of the Commission. However the Attorney General is still required by law to act as advisor to and counsel for the Commission when requested to do so, and I am glad to report that a most pleasant spirit of co-operation during the past two years has existed between this office and that of Hon. T. T. Turnbull, Special Counsel for the Railroad Commission.

SPECIAL COUNSEL STATE ROAD DEPARTMENT

Hon. B. A. Meginniss has for a number of years been special attorney for the State Road Department. The relationship of the Attorney General to the State Road Department is the same as that which exists between the Attorney General and the Railroad Commission and I am happy to report that a most pleasant relationship exists, and has existed during the past two years.

CONSOLIDATION OF ALL LEGAL FUNCTIONS UNDER ATTORNEY GENERAL

As I have pointed out in this report by citations from adjudged cases, the Attorney General is, of course, chief law officer of the State and is required by the constitution and the laws to advise with and appear as counsel in the courts on behalf of, all state officers.

This has led to the suggestion that all special counsel should be abolished and all the functions performed by these attorneys placed upon the Attorney General and his assistants in the interest of economy.

In my opinion no economy would result if this were done, because the work done by each of the special counsel for the Trustees of the Internal Improvement Fund, the Railroad Commission and the State Road Department requires the entire time of one attorney to handle. If their positions were abolished and the duties of same placed on this office, a corresponding number of additional Assistant Attorneys General would have to be added to the staff of this office, or the public work would be so delayed as to impair efficiency of the Departments involved.

Hundreds of legal documents must be prepared and executed during the course of a year by the Trustees of the Internal Improvement Fund, the Railroad Commission and the State Road Department, and this detail work alone takes all the time of one lawyer to handle.

So long as one lawyer must devote his entire time to one department and confine himself to the work of that department, it is my opinion that the department itself should be left to select its own counsel as has been done in the past.

While we are living today in an atmosphere of "mergers" of all kinds, I think a study of the situation in Florida will demonstrate the utmost in efficiency and economy now prevails in so far as rendition of legal services for state purposes is concerned, and I therefore most earnestly advise against any change in the direction of a "merger" of all legal services under the Attorney General, as I have heard suggested.

ADDITIONAL HELP FOR ATTORNEY GENERAL

Owing to the financial conditions prevailing at present, I am making no request for additional help in the office, although same is much needed. During the past two years the Attorney General with but two lawyers to assist him has handled for the state hundreds of civil and criminal cases. There is more litigation being filed in regard to matters which must be defended by the Attorney General, than ever before in the history of the state. The fact that it has been handled at all in this office has been made possible only through many hours of night work and by complete elimination of the Saturday half holiday which prevails in other departments.

Should the financial condition of the state warrant it, I would recommend that a position of Junior Assistant Attorney General be created at a salary less than would ordinarily be paid a practicing lawyer with an established reputation at the bar.

This position I would have filled by some young and deserving young lawyer who was just starting out in legal practice, preferably a young man just graduated from one of our state law schools. The appointment would be for one year only, after which some other young man would be selected for the next year, and so on for each year.

Such practice would not only give some deserving young man a start in life and a valuable experience for himself in the future practice of his profession, but would send out each year into the state to become leaders in the community and in state affairs, at least one young lawyer endowed with a thorough knowledge not only of the law, but of the political workings of the state and of its machinery and organization from an administrative standpoint.

With the aid of the right man, the Attorney General could well handle a greatly increased number of legal matters at a minimum of expense in doing so.

The present salary of a regular Assistant Attorney General is five thousand dollars a year. A junior assistant to act as personal aide to the Attorney General and his two Assistant Attorneys General could be obtained at half the salary of a regular assistant. By handling details now taking up much of the time of these other officials in legal

researches, which a young lawyer can make just as well as an older one could, the time of the Attorney General and of his Assistants could then be released to be applied to matters which could only be safely entrusted to an experienced practitioner.

I am a great believer in helping deserving young men get a proper start in the legal profession. The plan I have referred to is not original with me, as it has been practiced a number of years by Justice Oliver Wendell Holmes of the United States Supreme Court who appoints yearly the honor graduate of Harvard Law School as his personal secretary to help him with his judicial duties and also to be schooled in those affairs of the law which one can only acquire by practical experience.

When the proper time comes, I hope to see it put into practice in Florida and thereby not only help the individual to get his start in an honorable profession, but build up in Florida a number of young lawyers not only learned in the law, but learned in the administration of its governmental departments, political management and state craft.

ECONOMICAL ADMINISTRATION

I think I can safely assert that the office of the Attorney General has been administered economically, in fact, I would say more so than in any other state whose affairs I have been able to observe with reference to its legal department.

Some states have expended as high as \$100,000.00 annually in paying special counsel fees to handle matters which should be handled by the Attorney General as a part of his regular duties. The law contemplates that the Attorney General shall be a lawyer. He should be both competent to handle and willing to handle personally any important law suit, however difficult, which circumstances may thrust upon him. I am happy to report that in Florida, the Attorney General has always done this in the past and I am pleased to report that the policy will be continued during my administration.

Economy involves more than curbing disbursements. The man who cancels his fire and life insurance is reducing disbursements but not practicing economy. When a state makes a gesture at curbing disbursements on the same principle by neglecting needful improvements and abolishing important instrumentalities of government, which it saves in one year may have to be spent the next in the form of unnatural and forced expenditures in an attempt at re-adjustment. The state is increasing in population and importance. It is unreasonable to expect the expenses of government not to advance in the same proportion as our population and business affairs. The appropriations requested by this department for the next two years are the minimum upon which it can operate and do the work required.

CONCLUSION

In submitting this report I do so in the hope that the manner in which the duties of this office have been discharged during the period of the report, have proven satisfactory to the people of the state of Florida. I trust that those into whose hands it may come will give the report their careful consideration.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

VIII.

APPROPRIATIONS AND EXPENDITURES

APPROPRIATIONS

July 1, 1929, to June 30, 1931—	
Balance on Hand January 1, 1929	\$ 8,133.83
Attorney General	12,000.00
Assistant Attorney General	10,000.00
Assistant Attorney General	10,000.00
Law Clerk	4,200.00
Law Clerk	4,200.00
Two Stenographers	7,200.00
Indexing and Side-noting Laws as required by Sections 103 and 104 R. G. S. 120	2,500.00
Incidental Fund	5,000.00
Purchase of Law Books	1,500.00
Office Equipment	700.00
Total	\$65,433.83

EXPENDITURES

January 1, 1929, to December 31, 1930—	
Attorney General	\$ 9,000.00
Assistant Attorney General	7,500.00
Assistant Attorney General	7,500.00
Law Clerk	3,150.00
Law Clerk	3,150.00
Two Stenographers	4,545.04
Indexing and Side-noting Laws	1,133.44
Incidental Fund	1,203.06
Purchase of Books	1,174.32
Office Equipment	700.00
Total	\$39,055.86
Balance on hand to cover all expenses to June 31, 1931	\$26,377.97

IX.

SCHEDULE OF CIVIL CASES

CHANCERY

In the District Court of the United States, Southern District of Florida
William G. Alkazin, Plaintiff, vs. A. S. Wells, et al., constituting Florida
Railroad Commission, et al., Defendants.

The purpose of this suit was to enjoin the defendants from enforcing the provisions of Chapter 13700, Acts of 1929, and praying that said Act be declared to be in contravention of the rights of plaintiff under the 14th Amendment to the Constitution of the United States, the Commerce Clause of Art. I, Sec. 2, and Article IV of the Constitution of the United States, and the Federal Aid Act on January 1, 1931, Court ordered that matter be taken under advisement, with leave to parties to file additional pleadings, etc.

Circuit Court, Pinellas County.

Lester F. Allen, Complainant, vs. Sarah C. Pipkin, et al., Defendants.

This is a suit brought for the purpose of foreclosing a certain mortgage covering property in Pinellas County, upon which property the Bank of Clearwater, at the time of closing, held a second mortgage. No Liquidator having been appointed for said bank, the Comptroller was therefore made a party.

In the Circuit Court, Dade County.

Amelia Corporation, a Florida Corporation, Complainant, vs. E. B. Leatherman, as Clerk of the Circuit Court, Defendant.

A bill for injunction was filed here in praying that the defendant be enjoined and restrained from holding or attempting to conduct a sale of all tax certificates for the year 1927 (unpaid taxes for 1926) and subsequent omitted years, which have been issued against the lands of your Orator for non-payment of State and County taxes for said year, etc. Demurrer to Bill was filed and sustained, whereupon appeal was entered to the Supreme Court, where the case is now pending.

In the Circuit Court, Escambia County.

American National Bank of Pensacola, Complainant, vs. J. S. Roberts, as Tax Collector, Defendant.

This suit was brought for the purpose of enjoining the collection of taxes assessed against the capital stock, or shares of the complainant bank for the year 1925. Demurrer to bill was filed and was overruled and temporary injunction granted, from which ruling defendants appealed to the Supreme Court, where order of lower court was affirmed on August 1, 1927. Thereupon answer was duly filed, examiner appointed and testimony taken and the case again submitted to the Circuit Court on the pleadings and report of examiner. After report of examiner was filed a final decree was rendered making perpetual the temporary injunction theretofore granted. Whereupon from such ruling the defendant again appealed to the Supreme Court where the decree of the lower court was affirmed on April 1, 1930.

In the Circuit Court, Polk County.

American National Bank of Winter Haven, a Corporation, Complainant,
vs. J. P. Murdaugh, Tax Collector, Defendant.
Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1926. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller to intervene in said cause.

By agreement the final decree in the case of First National Bank of Lakeland vs. Murdaugh should govern in this case. The demurrer in the Lakeland case was overruled, whereupon an appeal was taken to the Supreme Court, where the order of the lower court was affirmed on July 19, 1930.

In County Judge's Court, Leon County.

Ernest Amos, as Comptroller, Plaintiff, vs. Albert Turnipseed, Defendant.

This is an action brought to foreclose a statutory lien as provided by Section 3 of Chapter 10183, Acts of 1925. Suit pending on demurrer to pleas. Settled March 28, 1929.

In the Circuit Court, Leon County.

Ernest Amos, as Comptroller, Petitioner, vs. C. M. Conkling and Gust Anderson, Objecting Depositors.

IN RE: Re-opening of First American Bank and Trust Company of West Palm Beach, Florida.

This is a matter wherein the Comptroller filed a petition praying that his Freezing Order be confirmed. Objection of certain depositors were filed. Court made order sustaining the demurrer of petitioner to petitioner's petition for order of confirmation, whereupon writ of error was taken to the Supreme Court, where the judgment of the lower court was affirmed on January 31, 1930.

In the Circuit Court, Leon County.

American Agricultural Chemical Co., et al., Complainants, vs. Nathan Mayo, as Commissioner of Agriculture, Defendant.

This was a suit brought for the purpose of restraining and enjoining the defendant from interfering with the complainants in manufacturing, importing, transporting, distributing, storing, keeping, offering for sale and selling their fertilizer in the State of Florida, etc., and from further prosecuting or threatening to prosecute complainants and forcing the complainants to comply with Chapter 14510, Acts of 1929. Answer and demurrer on behalf of the defendant were filed. On March 12, 1930 order overruling demurrer was filed, whereupon an appeal was taken to the Supreme Court, where still pending.

In the Supreme Court of the United States, October Term, 1930.

American Fruit Growers, Inc., Petitioners, vs. Brogdex Company, Respondent.

The petitioners herein filed suit for infringement of United States Letters Patent No. 1,529,461, issued March 10, 1925, to Ernest M. Brogden and Miles L. Towbridge on an application filed August 15, 1923, the bill

charged the petitioners with infringement of certain process claims and article claims. On motion the Attorneys General of Alabama, Arizona, California, Florida, Georgia, Louisiana and Texas were allowed to file brief as *Amici Curiae*.

In the Circuit Court, Leon County.

Atlantic Coast Line Railroad Company, Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the decree of the lower court was affirmed on October 23, 1929.

In the Supreme Court of the United States.

Atlantic Coast Line Railroad Co., Complainant, vs. State ex. rel. Fred H. Davis, as Attorney General, et al., Defendants.

This is a suit which involved the question of the removal of the Monticello Depot. A petition for a writ of certiorari was filed, which motion was denied. A petition for a rehearing was filed which also was denied.

Circuit Court Second Judicial Circuit of Florida in and For Leon County.

Atlantic Coast Line Railroad Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin the collection of Special District Taxes, Marion county, and is still pending on Answer to Bill.

Circuit Court Second Judicial Circuit of Florida in and for Leon County.

Atlantic Coast Line Railroad Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This suit was brought for the purpose of enjoining the Comptroller from the issuance of his warrant for the collection of the 1927 and 1928 taxes levied by the Caloosahatchee Improvement District in Lee County, upon the properties of said railroad. A demurrer to the Bill was filed, which demurrer was sustained on December 19, 1930.

In the Circuit Court, Osceola County.

Atlantic National Bank of Jacksonville, Complainant, vs. J. Wade Tucker, et ux, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage. It is alleged in the bill that the State Bank of Haines City recovered a judgment against Tucker in the sum of \$2310.56 and costs; that said bank has since closed its doors; that no liquidator has been appointed for said Bank, and that the title and right of possession of the assets of said bank is in Ernest Amos, Comptroller, one of the defendants. Pending on Answer to bill.

In the Circuit Court, Polk County.

Babson Park State Bank, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of

taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. By agreement the final decree in the case of Lake Alfred State Bank vs. Murdaugh should govern in this case. The demurrer in the Lake Alfred case was overruled, whereupon an appeal was taken to the Supreme Court, where the order of the lower court was affirmed on April 1, 1930.

In the District Court of the United States, Southern District of Florida.
Charles Ball, Complainant, vs. Bank of Bay Biscayne, and Ernest Amos, Comptroller, Defendants.

A bill of complaint was filed in this case praying for the appointment of a Federal Receiver for the Bank of Bay Biscayne. A motion to dismiss the bill was filed, which motion was granted and the suit dismissed on October 27, 1930, at the cost of the Complainant.

In the Circuit Court, Jackson County.

Bank of Greenwood, a Corporation, Complainant, vs. Hinton Folsom, Tax Collector, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the shares of stock of complainant bank for 1926 for State and County Purposes. Stipulation for intervention was entered into, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. A temporary restraining order was granted. Answers and demurrer to bill was filed December 5, 1928, granting a perpetual injunction herein, from which decree an appeal was taken to the Supreme Court where the decree of the lower court was affirmed on April 1, 1929.

In the Circuit Court, Jackson County.

Bank of Malone, a Corporation, Complainant, vs. Hinton Folsom, Tax Collector, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the shares of stock of complainant bank for 1926 for State and County purposes. Stipulation for intervention was entered into, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. A temporary restraining order was granted. Answers and demurrer to bill were filed on December 5, 1927. Final decree was entered on July 19, 1928, granting a perpetual injunction herein, whereupon an appeal was taken to the Supreme Court, where the decree of the lower court was affirmed on April 1, 1929.

In the Circuit Court, Polk County.

Bank of Mulberry, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant

for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. By agreement the final decree entered in the case of Lake Alfred State Bank vs. Murdaugh should govern in this case. The demurrer in the Lake Alfred case was overruled, whereupon an appeal was taken to the Supreme Court, where the order of the lower court was affirmed.

In Chancery of New Jersey.

Rachel Bierman, Complainant, vs. Milton Bierman, et als., Defendants.

A bill of complaint was filed in this case wherein it was prayer that Complainant be relieved of carrying out a certain provision contained in a Will devising certain property in West Palm Beach, Florida, for the purpose of establishing a Home for Aged Jews, with preference to those coming from New Jersey, the Executor alleging that the property devised was not suitable for such home, therefore that the bequest was impossible, and asking that the Court so decree, thereby making it possible for said property to be used for other purposes as set out in said Will,—the Attorney General being made a party to this suit on the ground that he was a representative of the public. An answer was filed wherein it was admitted that said property was not suitable for the purpose for which it was devised, and thereby joining in the prayer of the complainant that said complainant as executrix and trustee may be relieved from establishing said Home on the land of the testator in the State of Florida, in said bill described, and that said executrix and trustee be authorized to establish the Home elsewhere under the direction of this Court and that the said lands be sold, freed and discharged of said trusts.

District Court United States, Southern District of Florida.

John W. Bowden, et al., Complainants, vs. The Citizens Bank & Trust Company, et al., Defendants.

On the 6th day of February 1930, the Receiver appointed in this cause filed his report representing in substance that the affairs of the corporations committed to him as Receiver are so interwoven with the affairs of the Citizens Bank & Trust Company as to be inseparable therefrom, therein asking for an extension of the receivership in this case so as to embrace the said Bank, thereupon C. L. Knight, as liquidator of the Citizens Bank & Trust Company was ordered by the Court to show cause why a further decree should not be made extending the said receivership so as to embrace the affairs and assets of the said Citizens Bank & Trust Company. A motion to dismiss was filed by the Attorney General.

In the Circuit Court, Leon County.

Brooksville & Inverness Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, brief filed and argument had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

In the Circuit Court for Polk County.

Mrs. C. A. Buggs, Complainant, vs. Sarah C. Pipkin, et al., Defendants.

This is a mortgage foreclosure suit, the State being interested only to the extent of a certain judgment in said Bill of Complaint mentioned. An answer for the State was filed on December 2, 1930.

In the Circuit Court, Leon County.

Capital City Bank of Tallahassee, Complainant, vs. R. A. Davis, et al., Defendants.

This is an action brought wherein complainant prays that it be decreed to have a first lien in a certain amount found to be due the said contractors; that National Surety Company be enjoined and restrained for asserting any right or claim to said funds as against your orator; and that the said Board of Control be enjoined and restrained from making any payments to said surety company of any funds found to be due and payable to the said contractors, etc. Appearance on behalf of the State Board of Control was filed, also a demurrer. An amendment to the bill was filed, and the Court allowed complainant to dismiss as to the Board of Control, and also permitted complainant to make the State Comptroller and Treasurer parties defendant. No summons in chancery has been served on these two last named defendants.

United States District Court, Jacksonville Division, Southern District of Florida.

Hubert William Carcaba, et al., Plaintiffs, vs. M. G. McNair, Receiver of First National Bank of St. Augustine, et al., Defendant.

A bill of complaint was filed in this suit wherein it was prayed that this Court decree the right of plaintiffs in certain moneys collected by said Bank as Trustee, and that for the payment thereof plaintiffs have a lien upon certain bonds and securities deposited with the State Treasurer under the Trust Act of 1929, etc. Answer of Mr. Knott, State Treasurer, was filed on July 24, 1930.

In the Circuit Court, Palm Beach County.

Central Farmers' Trust Co., Complainant, vs. W. H. Tunncliffe, as Receiver of First American Bank & Trust Company, and Ernest Amos, as Comptroller, Defendants.

The Complainant in this suit prayed in its bill of complaint that it be decreed to have a preferred claim, etc., also prayed that said defendants be prohibited, enjoined and restrained from paying all or any part of the claims of creditors of said First American Bank & Trust Company, etc., until full payment of their claim, etc.

In the Circuit Court of Palm Beach County.

Central Trust Company of Illinois, Petitioner, vs. Ernest Amos, as Comptroller of the State of Florida, and W. H. Tunncliffe, as Receiver of First American Bank & Trust Co., Defendants.

A petition was filed in this case wherein it prayed that an account may be had and taken by or under the direction of this court as to the amount of money received by said First American Bank & Trust Co., of West Palm Beach, and that said fund may be decreed to be a trust

fund in the hands of said Receiver for the sole use and benefit of petitioner, and that said claim of petitioner may be allowed as a preferred claim, and that defendants be further directed to pay the amount of said collection to petitioner without further delay. Final decree entered on September 5, 1930, wherein it was ordered that the Central Trust Company of Illinois have a preferred claim against said bank for \$3,398.00.

In the Circuit Court, Leon County.

Charlotte Harbor & Northern Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, briefs filed and argument had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

In the Circuit Court of Baker County, In Chancery.

Chicago Trust Company, Complainant, vs. Ernest Amos, as Comptroller, et al., Defendant.

A bill of complaint was filed in this case praying that a temporary restraining order be issued against the defendants preventing them from interfering with the occupancy of certain lands, and that upon final hearing that such temporary restraining order be made permanent upon payment of taxes admitted and found to be due upon said lands. Answer and briefs were filed. On May 15, 1929 final decree was entered ordering taxes to be paid, etc.

In the Circuit Court of Polk County.

Citizens Bank of Lake Wales, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes proposed to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, and an order was entered allowing such intervention. By agreement the final decree entered in the case of Lake Alfred State Bank vs. Murdaugh should govern this case. The demurrer in the Lake Alfred case was overruled whereupon an appeal was taken to the Supreme Court where the order of the lower was affirmed on April 1, 1930.

In the Circuit Court of Volusia County.

City of Daytona Beach, Complainant, vs. State of Florida, et al., Defendants.

A petition for the validation of \$27,000 of Refunding Bonds was filed in the Circuit Court, whereupon after proper pleading had been filed and hearing had, a decree was entered on November 20, 1930, denying the validation of said bonds, from which decree an appeal was taken to the Supreme Court where the decree of the lower court was affirmed on January 10, 1931.

In the Circuit Court of Duval County.

City of Jacksonville, Complainant, vs. Oscar Nolan, as Tax Assessor, Fleming Bowden, as Tax Collector, and Ernest Amos, as Comptroller, Defendants.

A bill of complaint was filed herein, and among other things prayed that the defendants be temporarily and permanently enjoined from selling the property described in said bill at the tax sale to be held on August 4, 1930, or any other time for delinquent taxes for 1929, or any other year, or from selling any tax certificates thereon, and that the taxes levied upon said property be cancelled and declared null, void and of no effect, and the Tax Assessor be permanently enjoined from levying or assessing the property described for so long as the same is owned or used by complainant for municipal purposes, and that Ernest Amos, as Comptroller, be required to comply with such orders and decrees as the court may make. An answer on behalf of the Comptroller was filed on September 1, 1930. Decree entered in favor of Complainant on December 23, 1930.

In the Circuit Court, Dade County.

City of Miami, a Municipal Corporation, Petitioner, vs. Charles S. Thompson and his wife, Mary A. Thompson, et al., and W. V. Knott, Treasurer of the State of Florida, Defendants.

This is a condemnation proceeding wherein the City of Miami proposes to take over certain property for public purposes, and upon which property the State of Florida and the County of Dade have a claim and lien by reason of the unpaid taxes assessed thereon. Answer of W. V. Knott was filed on January 10, 1930.

In the Circuit Court, Dade County.

City of Miami, Plaintiff, vs. State of Florida, Defendant.

This was a bond validation suit, wherein it was sought to have validated and confirmed \$223,000 of refunding bonds, Series K of the City of Miami. An Answer was filed wherein it was averred that these particular bonds had never been approved by an election in which a majority of the freeholders of Miami, Florida, had participated, as required by the Constitutional Amendment to Sec. 6, Art. IX of Constitution, as adopted November 4, 1930. The bonds were declared valid by the Circuit Court, and upon appeal to the Supreme Court the decree of the lower court was affirmed.

In the Circuit Court, Leon County.

City of West Palm Beach, Complainant, vs. Ernest Amos, Comptroller, Defendant.

This suit was brought for the purpose of restraining and enjoining the State Comptroller from enforcing or attempting to enforce the provisions of House Bill No. 170, Chap. 13756, Acts of 1929, being an Act providing a Tax on Petroleum Products kept, stored or used in this State which had not been subject to the payment of a license tax for sale of same under any other statutes of this State, etc. Temporary injunction denied. Appeal was taken to the Supreme Court where the judgment of the lower court was affirmed on October 17, 1930.

In the Circuit Court for Polk County.

R. K. Clark, Complainant, vs. C. Palfred, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County in which the State of Florida had acquired an interest by reason of some prior judgment, etc. A formal answer was filed on behalf of the State of Florida.

In the Circuit Court for Polk County.

William T. Cleveland, Complainant, vs. Will H. Streater, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County in which the State of Florida had acquired an interest by reason of some prior judgment, etc. A formal answer was filed on behalf of the State of Florida.

In the Circuit Court, Duval County, In Chancery.

Colonial Investment Co., Complainant, vs. Oscar Nolan, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought in an effort to enjoin the enforcement of Chapter 14571, Acts of 1929, known as the Compulsory Tax Return Law. Demurrer to Bill was filed and sustained, thereupon on June 24, 1930 an appeal was taken to the Supreme Court where said law was held to be unconstitutional.

In the Circuit Court, Duval County.

Colonial Investment Company, Complainant, vs. Ernest W. Tyler, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering land in Duval county, the State being made a party by reason of having acquired an interest in said land by reason of some prior judgment. A formal answer on behalf of the State was filed on September 10, 1930. On October 31, Decree of Foreclosure was entered, and on December 2, 1930, order confirming sale was made.

In the District Court of the United States, for the Southern District of Florida, Miami Division.

C. M. Conkling, Plaintiff, vs. Ernest Amos, as Comptroller of the State of Florida.

This suit was filed for the purpose of seeking to enjoin the Comptroller from making an order granting permission to re-open the First American Bank & Trust Company of West Palm Beach, Florida. Dismissed by Court on August 5, 1929, on own motion.

In the Circuit Court for Polk County.

Continental Mortgage Company of Baltimore, Complainant, vs. W. P. Juhlin, et al., and Fred H. Davis, Attorney General, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County in which the State of Florida had acquired an interest by reason of some prior judgment, etc.

A formal answer was filed on behalf of the State. Final decree entered July 16, 1929. Decree confirming sale filed September 18, 1929.

In the Circuit Court for Polk County.

Continental Trust Company, Trustee, et al., Complainants, vs. W. F. Welch, et al., and Fred H. Davis, Attorney General, et al., Defendants.

This is also a suit brought for the purpose of foreclosing a mortgage covering certain land in Polk County in which the State of Florida had acquired an interest by reason of some prior judgment lien. A formal answer was filed on behalf of the State. Decree confirming sale entered Oct. 14, 1930.

In the Circuit Court, Polk County.

Ollie S. Cross, et al., Complainants, vs. Charles L. Cruse, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County, the State being made a party on account of a judgment held on the estreatment of a bond against C. L. Cruse and R. L. Martin in the sum of \$100 and costs. Answer on behalf of the State was filed on May 5, 1930. Sale confirmed Oct. 10, 1930.

In the Circuit Court, Hillsborough County.

Cuesta Rey & Company, Complainant, vs. John A. Newsome, as Liquidator of the Citizens Bank & Trust Co., and Ernest Amos, as Comptroller.

A bill of complaint was filed in this suit wherein it was prayed, among other things, that complainant be subrogated to all the rights and lien possessed by the said United States, for the amount of a certain certified check, upon all the assets of the Citizens Bank and Trust Company, at the time of its failure, and that said amount be paid out of said assets in preference to any and all other claims, etc. An appearance was filed on behalf of the Comptroller, and thereafter the matter was turned over to the Attorney for the Liquidator for further handling.

In the Supreme Court of Florida.

Dade County Security Co., Ernest Amos, as Comptroller, et al., Relators, vs. Paul D. Barns, et al., Respondents.

A petition for a writ of prohibition was filed in this cause wherein it was prayed the Circuit Court of Dade County and the Honorable Paul D. Barns as Judge thereof be prohibited from exercising any jurisdiction in a certain chancery cause pending in said court, wherein the respondents herein are complainants, and the relators herein are defendants; and further that a writ of prohibition be issued prohibiting said Circuit Court of Dade County and the Honorable Paul D. Barnes, as Judge thereof, from exercising any jurisdiction whatever over the Relator, Ernest Amos, as Comptroller. On December 26, 1929, Supreme Court ordered issuance of a rule nisi in prohibition as prayed. Demurrer to petition filed, and on June 6, 1930, Demurrer was over-

ruled. A writ of prohibition absolute has been issued and the case is now concluded.

In the District Court of the United States, Southern District of Florida.
Davis Island, Inc., Complainant, vs. United States of America, the State of Florida, et al., Defendants.

A petition for leave to file bill to foreclose mortgage was filed herein, which petition was granted and bill filed on September 20, 1928. This suit is brought in an effort to foreclose a certain mortgage on property located in the City of Tampa, the owner of which having had an income tax lien filed against him, and the State of Florida holding a judgment against one of the defendants who is the owner of the property in question. The case was settled by compromise insofar as the State of Florida was concerned.

Circuit Court, Hillsborough County, Florida.

Davis, Miller & Cobb, Inc., Complainants, vs. Willie Bryan, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Hillsborough County, the State being made a party on account of having a judgment on an Appearance Bond that affected the property involved. An Answer on behalf of the State was filed.

In the Circuit Court of Leon County.

W. T. Davis, as Liquidator of the Citizens Bank of Madison, Complainant, vs. W. V. Knott, et al., Defendants.

This suit was brought seeking the return of securities pledged by the Bank to the Bond Trustees of Madison County to secure sinking funds deposited in the Bank, and asking for an accounting. Suit pending on Answer to amended bill of complaint.

In the Supreme Court of the United States.

O. G. Denman, Administrator of the Estate of Charles H. Nauts, deceased, former Collector of Internal Revenue, Petitioner, vs. W. L. Slayton, Respondent.

A motion was filed by Attorney General Fred H. Davis, and Robert R. Reed, as Counsel for George B. Gibbons & Co., Inc., for leave to file a joint brief as Amici Curiae in the above case, which motion was granted and bill filed. The question at issue herein was the validity of a tax, in the form of income tax, sought to be imposed on dealers in state and municipal obligations, which tax is measured by the interest paid by dealers in carrying such obligations; states and municipalities being materially affected by this discriminatory tax burden.

Circuit Court Fifteenth Judicial Circuit in and for Palm Beach County, Florida. In Chancery.

J. D. Dodge, et ux., Complainants, vs. Edward Ertel, et ux, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering certain property in Palm Beach County, the State being made a party by reason of some interest claimed in and to the prop-

erty covered by the mortgage sought to be foreclosed. Answer on behalf of State was filed December 2, 1929.

United States District Court, Southern District of Florida, in and for Hillsborough County.

Albert W. Doepke, as Receiver, et al., Complainants, vs. D. F. Canfield, Tax Collector, and L. T. Farmer, Clerk Circuit Court, Defendants.

This suit was brought upon the refusal of the Tax Collector of Highlands County to issue a tax receipt to the First National Bank of Sebring after its failure; the Attorney General being called upon to handle the matter in connection with Mr. J. M. Lee, County Attorney. Case pending on Answer filed by the Attorney General.

District Court of the United States, Northern District of Florida.

Detroit Trust Company, and H. L. Stabton, Trustees, Complainants, vs. Grove-Dowling Hardware Co., Defendant.

A petition for intervention was filed in this suit by the State of Florida and Levy County, wherein it was prayed that the matter be referred to a Master to assess the amount of taxes due by Defendant on its real estate for 1928 and 1929, and that upon a proper report the Court order and decree that the Receivers be directed to pay said taxes to the proper authorities of Levy County and State of Florida which said taxes amounted to something over \$50,000.00, and which were fully paid.

In the Circuit Court Duval County.

E. A. Durst, Complainant, vs. A. J. Cone, et al., Defendants.

This suit was brought for the purpose of foreclosing two certain mortgages aggregating the sum of \$4200, the State claiming an interest by reason of a certain judgment against H. A. Halsema, one of the principal defendants herein. An answer on behalf of the State was filed November 3, 1930.

In the Circuit Court, Leon County.

East & West Coast Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, briefs filed and arguments had, before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

In the Circuit Court, Hillsborough County.

Eli Witt Cigar Co., Complainant, vs. John A. Newsome, as Liquidator of Citizens Bank & Trust Company, and Ernest Amos, as Comptroller, Defendants.

A bill of complaint was filed in this suit, and in due course an appearance was filed on behalf of the Comptroller, one of the defendants named therein. The case was thereafter turned over to the Attorney for the Liquidator for further handling.

In the Circuit Court, Hillsborough County.

Equitable Life Assurance Society, Complainant, vs. Bobby Meadows, et al., Defendants.

This is a mortgage foreclosure suit on which the Citizens Bank & Trust Company holds a mortgage; the Comptroller being made a party defendant because of his official connection with the liquidation of the Citizens Bank & Trust Co. An appearance was filed on behalf of the Comptroller and the case turned over to the Attorney for the Liquidator for further handling.

In the District Court of the United States for the Southern District of Florida.

Filer-Cleveland Company, a Florida Corporation, Complainant, vs. Robert Pate, et al., and the State of Florida, Defendants.

The suit was brought for the purpose of foreclosing a mortgage on certain property in Dade County, Florida, and it was alleged in the bill of complaint that the State of Florida had obtained as appeared of record a judgment against the defendant, Robert Pate, which said judgment created a lien upon the property described, but that any claim the State may have is inferior and subordinate to the right, title and interest of complainant. An answer was filed on behalf of the State, and upon hearing it was found that the equities were with complainant. Final decree entered June 21, 1929.

Circuit Court Levy County.

Federal Land Bank of Columbia, Complainants, vs. C. C. Epperson, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Levy County, the State being made a party by reason of some interest claimed in and to the property covered by the mortgage sought to be foreclosed. Answer for the State was filed April 7, 1930.

In the Circuit Court in and for Palm Beach County.

Fred E. Fenno, Clerk of the Circuit Court, Complainant, vs. Ernest Amos, as Comptroller, and Fred A. Gutelius, as Receiver of Farmers Bank & Trust Co., Defendants.

A bill of complaint was filed in this case wherein it was prayed that the Defendant Fred A. Gutelius, as Receiver of the Farmers Bank & Trust Company be required to refund to Complainant the sum of \$529,466.00 on deposit in trust with said bank, and that the Comptroller be required to make all orders necessary to such refund, and asking that a temporary restraining order be made, restraining and enjoining defendants from declaring and paying any dividend out of the assets in the custody of defendant Fred A. Gutelius, as such Receiver, etc., until and when defendant Gutelius has made said refund in full to Complainant, and that upon final hearing such temporary injunction be made perpetual.

In the Circuit Court of Dade County.

H. H. Filer, et al., constituting the Board of Public Instruction of Dade

County, Complainants, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this case in which it was alleged, among other things, that the Comptroller had in his possession and control the sum of \$48,000.00 United States bonds, and that the Comptroller will use and apply the same for and to the benefit of the general depositors of the Bank of Bay Biscayne unless he is restrained from doing so by the injunctive process of some court of competent jurisdiction, and praying that the court adjudicate and establish the rights of your orators and said Board, and also the Comptroller in and to said bonds, etc., and praying that the Comptroller be restrained and enjoined from in any way disposing of said bonds, etc. A petition for intervention was filed by Dr. J. H. Therrell and Miami Insurance Agency, Inc. Answers on behalf of all defendants were filed to which the School Board interposed a demurrer and Judge Thompson sustained such demurrers. Thereupon an appeal was entered in the Supreme Court where the case is now pending.

In the Circuit Court, Polk County.

First National Bank of Lakeland, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. Demurrer was filed for the defendants and upon hearing such demurrer was overruled, whereupon an appeal was taken to the Supreme Court and there the order of the lower court was affirmed on July 19, 1930.

In the Circuit Court, Jackson County.

First National Bank of Marianna a Corporation, Complainant, vs. Hinton Folsom, as Tax Collector, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the shares of stock of complainant bank for 1926 for State and County purposes. Stipulation for intervention was entered into, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. A temporary restraining order was granted. Answers and demurrer to bill was filed on December 5, 1927. Final decree was entered on July 19, 1928, granting a perpetual injunction herein, from which decree an appeal was taken to the Supreme Court where the judgment of the lower court was affirmed on April 1, 1929.

In the Circuit Court, Leon County.

First National Bank of St. Augustine, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this case wherein it was prayed that the defendant be compelled to allow the claim of the First National Bank of St. Augustine against the Farmers Bank & Trust Company of

West Palm Beach, Florida, which was in the hands of the Comptroller as a preferred claim on the ground that said bank acted merely as a collecting agency for money to be remitted to the St. Augustine bank, making the amount of the collection a trust fund which did not pass to the Comptroller as an asset of the bank. Demurrer to the bill was filed and argued and was overruled by the circuit judge. An Answer was filed.

In the Circuit Court, Leon County.

Florida Central & Gulf Railway Company, Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the judgment of the lower court was affirmed Oct. 23, 1929.

In the Circuit Court, Leon County, Florida.

Florida Central & Gulf Ry. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this suit wherein it was prayed among other things that the Defendant be enjoined and restrained from issuing, serving or levying warrants, or any other writ, order or process, attempting to collect from Complainant certain taxes for the year 1929. Pending on Bill and Answer.

In the Circuit Court, Palm Beach County, Florida.

Florida Cities Bus Co., Complainant, vs. W. S. McLin, Acting Motor Vehicle Commissioner, et al., Defendants.

This suit was brought in an effort to have a temporary injunction issued, there by enjoining and restraining the defendants, and each of them, and any and all persons acting in aid or in conjunction with them, from assessing or attempting to assess, collecting, or attempting to collect, in any manner, any tax, license charge, or fee whatsoever, under Section 1285 of Article 1 of Chapter 4 of Title 6 of First Division Compiled General Laws 1927, from or against complainant or all and singular its passenger busses in said bill of complaint mentioned. Demurrer was filed for Defendants which was sustained and suit dismissed on May 12, 1930.

In the Circuit Court, Leon County.

Florida East Coast Ry. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

A bill for injunction was filed in this case, wherein it was prayed that the Comptroller be enjoined and restrained from issuing, serving or levying his warrant, or other writ, order or process, attempting to collect from Complainant certain taxes assessed by the Town of Palm Bay, now known as Palm Bay District, in the County of Brevard. Now pending on Demurrer to Bill.

In the Circuit Court, Volusia County.

Florida Inland Navigation District, Complainant, vs. State of Florida.

This was a bond validation proceeding. Objections to the petition were filed, whereupon the court entered an order overruling such objections and validating and confirming said bonds, from which order an appeal was entered. The Supreme Court on May 17, 1929 affirmed the decree of the lower court.

In the Supreme Court of Florida.

Florida, State of, and Seward Investment Company, a Corporation, and Harry P. McGinley Company, a Corporation, Appellants, vs. Florida Inland Navigation District, a Special Taxing District, Appellee.

This was a suit against the State of Florida, brought in the Seventh Judicial Circuit in and for Volusia county, wherein the appellee here sought the validation and confirmation of \$1,887,000.00 of negotiable, interest bearing bonds. Objections to the validation and confirmation of said bonds were interposed by the State. The Court below, after hearing arguments as to all questions of law raised in the pleadings entered orders overruling all objections interposed and entered its final decree validating and confirming said bonds, from which order and decree the case was appealed to this Court where the decree of the lower court was affirmed on May 17, 1929.

In the Circuit Court, Leon County.

Florida Western & Northern Railroad Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Testimony was taken, briefs filed, and argument had, before Judge Jones on July 27, 1930, but thus far no decision has been rendered by the Court.

In the Circuit Court, Broward County.

Fort Lauderdale Riparian Co., Complainant, vs. Fort Lauderdale Bank & Trust Co., et al., Defendants.

This suit was brought asking that an accounting be made by the Broward Bank & Trust Company, and Ernest Amos, and further to restrain the defendants from making disposition of the assets of the Fort Lauderdale Bank & Trust Company to common creditors or on preferred claims until such accounting is made. Pending on demurrer.

In the Circuit Court Dade County Florida.

James M. Fowler, Jr., Complainant, vs. Biscayne Point Realty Corp., et al., Defendants.

This is a suit brought for the purpose of foreclosing a certain mortgage, the State being made a party defendant because it claimed some interest in and to the land covered by said mortgage sought to be foreclosed.

In the Circuit Court Volusia County Florida.

D. F. Fuquay and C. H. Rogers, Complainants, vs. W. V. Knott, State Treasurer, Defendant.

A suit was brought to foreclosure a mortgage, and after final decree and an order of sale, but before sale, complainants sought by supplemental bill to impress a lien upon securities of the mortgagor held

by a trustee residing in another county. The trustee, Mr. Knott, filed a plea in abatement to the venue, which was overruled and the trustee appealed the case to the Supreme Court where the order of the Circuit Court was reversed on May 15, 1930.

In the Supreme Court of Florida.

Guarantee Trust & Savings Bank, Complainant, vs. United States Trust Company, et al., Defendants.

This is a suit which was brought in the Circuit Court of Duval county, praying cancellation and rescision of a certain contract and agreement made July 15, 1922. Separate demurrers were filed. On July 31, 1924, an order was made sustaining the demurrers, from which order an appeal was taken to the Supreme Court on August 1, 1924, where the judgment of the lower court was reversed.

In the Circuit Court, Polk County.

Alexander Glass, Complainant, vs. George T. Spear, et al., Defendants.

This suit was brought to foreclose a mortgage covering property in Polk County, the state being made a party by reason of having secured a judgment dated the 8th day of March 1927, on the bail bond against G. T. Spear and N. L. C. D'Milly in the amount of One Thousand Dollars. A formal answer was filed on behalf of the State.

United States District Court, Southern District of Florida.

Rosa Hankins, Complainant, vs. Bank of Bay Biscayne, Defendant, Ernest Amos, Intervening Defendant.

A petition was filed in this suit wherein it was prayed that this Court proceed in the premises to appoint a Receiver for defendant bank. A petition for intervention was filed by the Attorney General on behalf of the Comptroller, and such petition was granted. It was also ordered that the property and assets of said bank shall be held by the Comptroller in statu quo, etc., and that a Special Representative of this Court was appointed, etc., from which order an appeal was entered, to the United States Court of Appeals, where the order appealed from was reversed with direction to dismiss bill. Bill dismissed July 11, 1930.

Mr. H. P. Adair, attorney, of Jacksonville, Florida, as well as Attorneys Fred M. Hudson, Carl T. Hoffman and James E. Colkins of Miami, rendered valuable assistance in this case to the Attorney General.

In the Circuit Court, Palm Beach County.

Harjin, Inc., a corporation, et al., Complainant, vs. Roy A. O'Brannon, as Tax Collector, Defendant.

A bill for injunction was filed in this case wherein it was prayed that said Tax Collector be temporarily restrained and enjoined from selling or offering for sale certain lands described in the said delinquent tax list as published, and as described. That upon final hearing the said injunction be made permanent; that the tax assessment and tax roll of said county for the year 1927 be declared null, void and of no effect. Restraining order denied, and amended bill was filed. Notice of application for intervention was filed on behalf of the Comptroller, which petition was granted, thereupon demurrer was filed on behalf of the in-

tervening defendant. Also motion to dismiss. On April 4, order was made therein decreeing that complainants within 15 days pay into the registry of the court 20% of the taxes due. In that event the demurrer to stand as overruled and motion to dismiss as denied, otherwise demurrer to be sustained and motion to dismiss granted. Petition for supersedeas was filed by complainant on September 6, 1930, after motion to dismiss had been filed by defendant, which petition was denied and motion to dismiss granted, whereupon the case was appealed to the Supreme Court where the decree of the lower court was affirmed.

In the Circuit Court, Palm Beach County.

Harjim, Inc., a corporation, et al., Complainant, vs. Roy A. O'Bannon, Tax Collector, Defendant.

This is a similar suit to the one just above reported, the only difference being that the tax assessment and tax roll of said county for the year 1928 be decreed to be null, void and of no effect. The decision of each Court was the same as in the above case.

In the Circuit Court, Palm Beach County.

Harjim, Inc., a corporation, et al., Complainant, vs. Roy A. O'Bannon, as Tax Collector.

A bill for injunction was filed in this case wherein it was alleged a discrimination was made in the preparation of the tax roll for the year 1929, as prepared by the County Assessor of Taxes, and approved by the Board of County Commissioners of Palm Beach County. A petition for intervention was filed by the Comptroller, which was granted on June 23, 1930. Pending on Motion to Dismiss, Answer and Demurred to Bill.

In the Circuit Court, Broward County.

Jamson C. Hart, as Executor, etc., Complainant, vs. City Bank of Fort Lauderdale, et al., Defendants.

This suit was brought for the purpose of having declared a preference in favor of the Complainant in certain funds of the City Bank of Fort Lauderdale, which said funds are not in the hands of the State Treasurer. Answer for Mr. Knott, as State Treasurer was filed on Oct. 7, 1929.

Circuit Court, Polk County Florida.

Leo Haskell, et al., Complainants, vs. W. P. Juhlin, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County, the State being made a party on account of a judgment obtained December 10, 1928, based upon an estreatment of a bail bond against W. P. Juhlin, one of the defendants hereto. Answer on behalf of State was filed May 5, 1930.

In the Circuit Court, Palm Beach County.

Highlands Glades Drainage District, Complainant, vs. Highland Glades Farm Company et al., and State Board of Education of the State of Florida, et al., Defendants.

A Bill of Complaint was filed in this case wherein it was prayed that an accounting of certain delinquent annual installment and main-

tenance taxes levied for the years 1922, 1923, 1924 and 1925 on the lands in the Highland Glades Drainage District in Palm Beach County, may be taken under and by direction of this Court; that said delinquent taxes, penalties and costs of suit, together with reasonable attorney's fee, be fixed by this Court and declared a lien upon and against the said several tracts or parcels of land mentioned, etc. Appearance was filed on behalf of the State Board of Education on December 3, 1928. Suit dismissed as to State Board of Education.

In the Circuit Court, Palm Beach County.

Highland Glades Drainage District, Complainant, vs. H. G. Greet, et al., and State Board of Education et al., Defendants.

A Bill of Complaint was filed in this case praying that defendants be compelled and enforced to pay the amounts due as tax liens as set forth in said petition, etc. Appearance on behalf of the State Board of Education was filed, also answer. Suit dismissed as to State Board of Education.

Circuit Court Duval County.

Harry Hirschberg et al., Complainant, vs. Allen Bannister et al., Defendants.

This is a mortgage foreclosure suit—the State being interested only to the extent of a certain judgment in said Bill of Complaint mentioned. An Answer for the State for the use and benefit of Duval County was filed November 21, 1930.

Circuit Court, Polk County Florida.

Chas. W. Hoff, et al., Complainants, vs. W. H. Bussabarger, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County, the State being made a party on account of a judgment obtained October 10, 1928, based upon an estreatment of a bail bond against W. H. Bussabarger, one of the defendants hereto. Answer on behalf of State was filed May 5, 1930.

In the Circuit Court, Volusia County.

Loring E. Holmes, et al., Complainants, vs. Merchants Bank & Trust Co., et al., and Ernest Amos, as Comptroller, Defendants.

A bill was filed in this suit wherein an accounting was prayed, and that the defendants, Merchants Bank and Trust Company, J. W. Perkins, as Liquidator, and Ernest Amos, as Comptroller be ordered to pay unto the substitute trustee in said bill referred to such sum or sums of money as shall be found to have been lost to a certain trust estate also in said bill mentioned, etc. An answer on behalf of the Comptroller was filed, and the matter turned over to the Attorney for the Liquidator for further handling.

In the Circuit Court, Duval County.

Home Building & Loan Company, Complainant, vs. J. Hal Smith, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Duval County, the State being made a party

by reason of having acquired an interest in said property by a prior lien thereon. An answer on behalf of the State was filed.

In the Circuit Court, Duval County.

Iona Drainage District, Complainant, vs. A. P. Anthony, as sole Receiver of United States Trust Co., Ernest Amos, as Comptroller, and John C. Luning as State Treasurer, Defendants.

This is a supplementary proceeding wherein complainant filed petition alleging that it had deposited certain bonds to be held as a trust fund with the United States Trust Company, and that these bonds had been deposited by U. S. Trust Company in the office of the State Treasurer under the Trust Act; and that U. S. Trust Company was without authority to pledge such bonds in the office of the State Treasurer under the Trust Act. Answer was filed on behalf of John C. Luning on October 3, 1924. An order was entered and filed February 4, 1930, wherein it was decreed that Intervenor be paid the sum of \$1,011.32.

In the Circuit Court, Leon County.

Islands Incorporated, Complainant, vs. Doyle E. Carlton, as Governor of the State of Florida, et al.

A bill of complaint was filed in this case, among other things praying that the defendants be restrained from scratching through, obliterating, marking out, tearing through, cancelling, or destroying a certain deed of the complainant signed by the said defendants on December 27, 1927, and that upon final hearing said restraining order and injunction be made perpetual, etc. Demurrer and Plea Res judicata was filed. On September 16, 1929 said Plea was sustained.

In the Circuit Court, Hillsborough County.

Jefferson Standard Life Ins. Co., Complainant, vs. Enrique Rodriquez, et ux, et al., Defendants.

This is a suit brought for the purpose of foreclosing a mortgage—the State being made a party by reason of certain interest claimed in, to or upon the property mortgaged by reason of two certain judgments obtained by the State against Enrique Rodriquez et ux. Answer on behalf of the State was filed on December 2, 1929. Final decree for Complainant entered February 8, 1930.

In the Circuit Court, Hillsborough County.

Jefferson Standard Life Ins. Co., Complainant, vs. Alexander Lumber Co., et al., Defendant.

This is a mortgage foreclosure suit on property on which the Citizens Bank & Trust Company holds a second mortgage, which is a blanket mortgage given to the Bank to secure any indebtedness which Defendant Lumber Company might owe to the Bank. The Comptroller is made defendant because of his official connection with the liquidation of the Citizens Bank & Trust Co. An Appearance was filed for the Comptroller on March 3, 1930. The case was turned over to the Attorney for the Liquidator for further handling.

In the Circuit Court, Franklin County.

Jerome H. Sheip Co., Inc., et al., Complainant, vs. Ernest Amos, as Comptroller et al.

This was a suit brought for the purpose of restraining and enjoining the State Comptroller from enforcing or attempting to enforce the provisions of House Bill No. 170, Chap. 13756, Acts of 1929, being an Act Providing a Tax on Petroleum Products kept, stored or used in this State which have not been subjected to the payment of a License Tax for Sale of same under any other statutes of this state, etc. Temporary restraining order denied. An appeal was taken to the Supreme Court where the judgment of the lower court was affirmed on October 17, 1930.

In the Circuit Court, Hillsborough County.

Carl Johnson, Plaintiff, vs. Doyle E. Carlton, as Governor, Defendant.

This is a suit brought to have a certain judgment set aside, said judgment having been rendered against the plaintiff herein as a bondsman for the appearance of one Herman Williams to appear in the Criminal Court of Record to answer a charge for assault with intent to murder. Answer on behalf of the Governor was filed on January 6, 1930.

In the Circuit Court, Orange County.

John C. Jones, et al., Complainants, vs. W. E. Martin, as Tax Collector, et al., and W. V. Knott, as State Treasurer, Defendants.

This suit was brought for the purpose of removing cloud from title, such cloud having been created by reason of certain tax sale certificates having been issued. Demurred was filed on behalf of Mr. Knott; also a Motion to dismiss. Suit dismissed April 30, 1930.

In the Circuit Court, Orange County.

John C. Jones, et al., Complainants, vs. W. E. Martin, as Tax Collector, et al., W. V. Knott, as State Treasurer, and Ernest Amos, as Comptroller, Defendants.

This suit was brought for the purpose of removing cloud from title, such cloud having been created by reason of certain tax sale certificates having issued. Demurred to Bill was filed, also Motion to Dismiss, whereupon suit was dismissed on October 2, 1930.

Circuit Court, Dade County.

John J. Kehoe, Complainant, vs. W. S. Smith, et al., Defendants.

This is a suit brought to foreclose a mortgage on certain property in Dade County—the State being made a party by reason of having obtained judgments against defendant, the owner of the mortgaged property, because of his having become surety on divers and numerous bail bonds, and that estreatures were taken on said bail bonds and judgments obtained. Answer on behalf of State was filed December 2, 1929.

In the Circuit Court, Dade County.

Keystone Securities Corp., Complainant, vs. Miami Real Estate Company, et al., Defendant. No. 30655-B.

A bill of complaint was filed in this case and as shown in said bill this suit was brought for the purpose of having the Central Farmers'

Trust Company confirmed as successor trustee to the Biscayne Trust Company. Appearance filed on behalf of the Comptroller.

In the Circuit Court, Dade County.

Keystone Securities Corp., et al., Complainants, vs. N. E. Second Avenue Co., et al., Defendants. (6 cases.)

A bill of complaint was filed in these cases, and as shown in said bill these suits were brought for the purpose of having the Central Farmers' Trust Company confirmed as successor trustee to the Biscayne Trust Company. Appearance on behalf of the Comptroller was filed.

In the Circuit Court, Alachua County.

King Lumber Co., Plaintiff, vs. State Board of Control, Defendant.

This is a suit brought to recover a balance to be due by the defendant to plaintiff on account of a contract for the construction of a building by plaintiff for defendant on the grounds of the University of Florida at Gainesville. Demurrer to plaintiffs replication was overruled, and case appealed to Supreme Court, where pending.

In the Circuit Court, Leon County.

Kissimmee River Railway, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and argument had, but thus far no decision has been received from the Court.

In the Circuit Court, Citrus County.

W. V. Knott, State Treasurer, et al., Complainants, vs. Royal Indemnity Company, Defendant.

A bill of complaint was filed in this cause wherein it was prayed that a Receiver be appointed to take charge of certain securities referred to in said bill, with authority to collect the same, make sale thereof, or make such other disposition thereof as the Court may direct, etc. A general demurrer to the bill was filed, which demurrer was overruled, from which ruling the case was appealed to the Supreme Court.

In the Circuit Court, Citrus County.

W. V. Knott, as Treasurer of the State of Florida, et al., Complainants, vs. G. I. Singleton, et al., Defendants.

A bill of complaint was filed in this cause wherein it was prayed that a Receiver be appointed to take charge of certain securities referred to and described in said sworn bill of complaint, with authority to collect the same, make sale thereof, or make such other disposition thereof as the Court may direct, etc. Two Interlocutory Orders entered, one appointing a Receiver and the other overruling the General Demurrers of Defendants, to which orders an appeal was entered, where the case is now pending.

In the Circuit Court, Polk County.

Lake Alfred State Bank, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. Upon final decree an order was entered declaring the equities to be with complainant. Thereupon, an appeal was taken to the Supreme Court where the decree of the lower court was affirmed on July 19, 1930.

In the Circuit Court, Polk County.

Lake Hamilton State Bank, a Corporation, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. By agreement the final decree in the above case should govern in this case.

In the Circuit Court, Polk County.

Lake Wales State Bank, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. By agreement the final decree in the Lake Alfred State Bank case above should also govern in this case.

In the Circuit Court, Polk County.

Lakeland Building & Loan Ass'n, Complainant, vs. A. N. Johnson, et al., Defendants. 2 Suits.

These suits were brought for the purpose of foreclosing two certain mortgages covering certain property in Polk County, the State being made a party by reason and to the extent of a certain judgment held by it and described in the bill of complaint. An Answer for the State was filed.

In the County Judge's Court, Duval County.

Will Larnce, deceased, IN RE: Estate of.

A disclaimer was filed by the Attorney General on behalf of Mr. W. V. Knott, State Treasurer, wherein it was stated that no money from

the estate of Will Larne, deceased, had been paid into the Treasury of the State of Florida, etc.

In the Circuit Court, Dade County, Florida.

Lora L. Lasseter, et al., Complainant, vs. Dade County Security Company, et al., Defendants.

It is sought in and by this suit to have the Court substitute a Court Receiver in lieu of the Receiver appointed by the Comptroller. Special demurred on behalf of the Comptroller, also motion to dismiss was filed. Order entered denying Motion.

In the County Judge's Court, Leon County.

Lester Lewis, et al., Plaintiff, vs. D. B. Pinkston, Acting State Motor Vehicle Commissioner, et al., Defendant.

This was a suit brought to foreclose a lien for license tax on an automobile. Settled by agreement.

In the Circuit Court, Leon County.

Louisville & Nashville Railroad Co., et al., Complainants, vs. Ernest Amos, Comptroller, Defendant.

This is a suit brought seeking to enjoin the collection of taxes due on certain property of complainants for the year 1927. Demurrer was filed, and order overruling said demurrer was entered September 18, 1928, wherein it was ordered that the railroad companies immediately pay 20 per cent of taxes assessed and within a certain time thereafter 6.8 per cent, from which ruling the case was appealed to the Supreme Court. This Court has ordered that the 20 per cent tendered as alleged in the bill be paid to the Comptroller, which amount has been paid. On Aug. 1, 1929, the Supreme Court affirmed order of lower court.

Circuit Court Leon County, Florida

Louisville & Nashville Railroad Company, et al., Complainants, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this case praying that the defendant be restrained and enjoined from collecting the taxes due on certain personal property of the complainants for the year 1928. Stipulation of Counsel was entered into wherein it was agreed that a consent decree be entered, wherein it should be ordered that complainants do pay to the defendant thirty per cent of the tax in question, and pay all costs as to this suit, whereupon this suit was dismissed in January, 1930.

In the Circuit Court, Orange County.

Marbury Lumber Company, Complainant, vs. Ernest Amos, as Comptroller, et al., Defendants.

A bill of complaint was filed herein and among other things prayed that Ernest Amos, as Comptroller, and W. L. Jackson, as Receiver of Orlando Commercial Bank, may be proper process be made parties defendant to this bill, and that this Court order defendants to recognize a certain claim of complainant as a preferred claim, and to pay it on the same basis other preferred claims against said bank have been paid, etc.

In the Circuit Court, Leon County.

John E. Mathews, Complainant, vs. Ernest Amos, as Comptroller, W. V. Knott, as State Treasurer, Defendants.

This suit was brought for the purpose of enjoining the distribution of a part of the Five Cents Gasoline Tax for the purpose of aiding in the retirement of bonded indebtedness of Counties. Demurrer was filed and upon hearing said demurrer was overruled, from which order an appeal was taken to the Supreme Court where the decree of the lower court was affirmed on January 23, 1930.

In the Circuit Court, Dade County.

Miami Bank & Trust Co., Complainant, vs. Exchange Building Corporation, the State of Florida, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Dade County, the State being made a party by reason of some interest claimed in and to the property covered by the mortgage sought to be foreclosed. Answer for the State was filed on January 6, 1930.

In the Circuit Court, Dade County.

Miami Corporation, Complainant, vs. Coral Gables Securities Corporation, et al., Defendants.

A bill of complaint was filed herein in which it was prayed, among other things, that by decree of this Court it may be adjudged that each and every of said defendants, jointly and severally, have no valid right, title, interest, claim, lien or demand of any sort or nature, recognizable in this Court or against your orator and its successors and assigns in or to the lands and submerged lands in said bill mentioned. Special Demurrer was filed on behalf of the State Board of Education on November 3, 1930.

Circuit Court, Dade County, Florida.

The Miami Transit Company, Complainant, vs. Ernest Amos, as Comptroller, et al., Defendants.

This suit was brought in an effort to enjoin and restrain the defendants from assessing, attempting to assess, collect, or attempting to collect in any manner any tax, license charge or fee whatsoever under Chapter 14574, Laws of Florida, 1929. Demurrer to bill was filed on February 5, 1930, and on April 7 an order was entered sustaining the demurrer, from which ruling an appeal was taken to the Supreme Court, where the case is pending on Motion of dissolve and discharge superseas.

Circuit Court, Dade County, Florida.

The Miami Transit Company, Complainants, vs. W. S. McLin, Acting Motor Vehicle Commissioner, et al., Defendants.

This suit was brought in an effort to enjoin and restrain the defendants from assessing, or collecting any tax, license charge, or fee whatsoever under Section 1285 of Article 1 of Chapter IV of Title 6 of the First Division of the Compiled General Laws of Florida, 1927, from complainant or all and singular its passenger busses in the bill men-

tioned. Answer and demurrer were filed Feb. 5, 1930. Demurrer was sustained and complainants given leave to file amended bill which was filed on May 5, 1930, and demurrer filed, which demurred was sustained on August 13, 1930, from which ruling an appeal was taken to the Supreme Court. On November 25, 1930, a Motion to vacate supersedeas was filed, which motion was granted. Case now pending on briefs.

In the Circuit Court, Dade County.

C. L. Miller & Company, as Trustee, Complainants, vs. Callie H. Watson, a widow, et al., Defendants.

A petition was filed in this case by the Trust Company of Georgia wherein it was prayed that said trust company be substituted as complainant trustee in the above entitled cause for C. L. Miller, as trustee. Ernest Amos, Comptroller of this State, intervened and filed a petition protesting against the appointment of said trustee in the above cause. This cause came on for hearing on June 25, 1928, but the judge adjourned said hearing indefinitely in order that counsel for complainant could amend their petition.

In the Circuit Court, Polk County.

C. J. Morrison, Complainant, vs. Sarah C. Pipkin, as Administratrix of the Estate of D. M. Pipkin, deceased, et al., Defendants.

This suit was brought to foreclose a certain mortgage covering property in Polk County, the State being made a party on account of a judgment obtained against E. H. Pipkins, son of D. M. Pipkins, deceased. Answer on behalf of the State was filed on October 6, 1930.

District Court, Southern District of Florida, Hillsborough County.

Adriana Morales, Complainant, vs. The Citizens Bank and Trust Company, etc., et al., Defendants.

A petition was filed in this suit wherein it was prayed that this Court proceed in the premises to appoint the Receiver for the defendant Bank. A Petition for intervention on behalf of the State was filed by the Attorney-General, and such petition was granted. Motion to dismiss was filed on April 7, 1930.

In the Circuit Court, Palm Beach County, Florida.

S. D. Morris, as Successor Trustee, Complainant, vs. J. P. Cochrane, as Liquidator of First American Bank & Trust Co., Ernest Amos, as Comptroller and W. V. Knott, as State Treasurer, Defendants.

A bill for accounting and for the appointment of a Receiver was filed wherein it was prayed, among other things, that the Court by proper order appoint a Receiver, etc., and that certain securities held by the State Treasurer under the Trust Act of 1927 be ordered and required to be delivered to said Receiver for liquidation. Demurrers on behalf of the defendants were filed, which demurrer was sustained, with leave to file an amended bill. Another demurrer was filed to the amended bill and it was overruled on September 15, 1930. From which ruling an appeal was entered.

In the Circuit Court, Palm Beach, Florida.

Richard McAllister, Jr., Complainant, vs. Roy O'Bannon, as Tax Collector of Palm Beach County, Florida, Defendant.

A bill for injunction was filed herein praying that the defendant be enjoined and restrained from offering for sale, selling and attempting to sell certain land belonging to Complainant in said bill described at the next ensuing State and County tax sale, and that said Tax Collector be temporarily enjoined from issuing any tax sale certificates against any of Complainant's land for 1929 taxes, etc. Demurrer to bill was sustained on June 5, 1930, with leave given to file amended bill, to which a demurrer was filed on September 1, 1930.

In the Circuit Court, Palm Beach, Florida.

McAllister Realty Company, Complainant, vs. Roy A. O'Bannon, as Tax Collector of Palm Beach County, Florida, Defendant.

A bill for injunction was filed herein praying that the defendant be enjoined and restrained from offering for sale, selling and attempting to sell certain land belonging to Complainant in said bill described at the next ensuing State and County tax sale, and that said Tax Collector be temporarily enjoined from issuing any tax sale certificates against any of Complainant's land for 1929 taxes, etc. Demurrer to bill was sustained on June 5, 1930, with leave given to file amended bill, to which a demurrer was filed on September 1, 1930.

In the Circuit Court, Charlotte County.

J. W. McWilliams Co., Complainant, vs. W. T. Oliver, Clerk Circuit Court, et al., Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

A bill of complaint was filed in this case praying that the Tax Collector be restrained and enjoined from selling or offering for sale certain lands described in the delinquent tax list as published, and as described; that upon final hearing the said injunction be made permanent; that the tax assessment and tax roll of said County for the years 1927, and 1928 be declared null and void and of no effect. Notice of application and Petition for Intervention was filed on behalf of the Comptroller. Order allowing intervention filed July 23, 1929. On August 23, 1929 an Answer on behalf of the intervening defendant was filed.

In the Circuit Court, Dade County.

New Miami Shores Corporation, Complainant, vs. George R. K. Carter, et al., Defendants.

This is a mortgage foreclosure suit wherein a petition for intervention was filed in behalf of the State of Florida, and it was prayed that the respective rights, titles and interest of the parties in said property be determined and adjudicated, etc.

In the Circuit Court, Palm Beach County.

Lynn S. Nichols, Complainant, vs. Florida Bank & Trust Co., of West Palm Beach, et al., Defendants.

A bill for accounting and for the appointment of a Receiver was filed, wherein it was prayed, among other things, that the court by

proper order appoint a Receiver, etc., and that certain securities held by the State Treasurer under the Trust Act of 1927 be ordered and required to be delivered to said Receiver for liquidation. An answer was filed on behalf of the State Treasurer on October 25, 1930.

United States District Court Southern District of Florida.

B. A. Noble, Plaintiff, vs. Doyle E. Carlton, Governor, et al., Defendants.

This suit was brought to test the validity of Chapter 13696, Laws of Florida, Acts of 1929, the same being "An Act to Define and Regulate the Sale of Milk and Cream in the State," etc. Case argued in New Orleans before a Three Judge Court on December 12, 1929. On January 4 the prayer for a temporary injunction was denied, and an Order entered denying application for an interlocutory injunction.

In the United States District Court, Northern District of Florida.

O'Leary Investment Company, Complainant, vs. John W. Martin, as Governor, et al., Defendants.

This suit was brought in an effort to enjoin and restrain defendants from levying any taxes or assessments in pursuance of Chapter 12016, Acts of 1927, and also from issuing, selling, or disposing of any bonds under or in pursuance of said Act. Answer and motion to dismiss were filed on November 1, 1928. Order of Dismissal made on July 15, 1929.

In the Circuit Court, Leon County.

Orange State Oil Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this case praying that a temporary restraining order be issued, restraining the defendant from levying or causing to be levied on the property of Complainant by Comptroller's Tax Warrant, under the provisions of Section 1273 Compiled General Laws of Florida, for the collection of certain gasoline tax. A demurrer on behalf of defendant was filed, which demurrer was overruled and suit dismissed, from which ruling the case was appealed to the Supreme Court, where the order of the lower court was affirmed on October 17, 1930.

In the Circuit Court, Pinellas County.

Thomas Orr, Complainant, vs. The Guaranty Title & Trust Co., as Trustee; W. V. Knott, State Treasurer, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering land in Pinellas County, Florida, in which it is alleged W. V. Knott, State Treasurer, claims or pretends to claim some interest or right by reason of a certain assignment, or trust deed, the same being executed by the Guaranty Title and Trust Co., etc. Answer on behalf of Mr. Knott was filed on August 9, 1930.

In the Circuit Court, Dade County.

Herbert H. Pape and Rom Pape, Complainants, vs. Rabun E. Johnston, et ux, et al., and State of Florida, Defendants.

This is a suit brought for the purpose of foreclosing a mortgage—the State being made a party by reason of some interest claimed in and

to the land covered by the mortgage sought to be foreclosed. Answer for State filed on September 2, 1929.

In the County Judge's Court, St. Lucie County,

Phillipe N. Paris, et al., Complainants, vs. W. V. Knott, as State Treasurer, Defendant.

This is a suit wherein the State Treasurer was cited to show cause why certain funds in his hands should not be paid over to the complainants herein. An answer on behalf of the defendant was filed on September 3, 1929. After taking testimony it was decided not to appear further to resist order sought.

In the Circuit Court, Pasco County.

Pasco County State Bank, IN RE: Reopening.

The Comptroller of the State of Florida filed a petition in this matter praying confirmation of his Freezing Order, whereupon objections were filed by certain depositors. Order was made on August 22, 1929 confirming Freezing Order of the Comptroller.

In the Circuit Court, Alachua County.

Phifer State Bank of Gainesville, Florida, IN RE: Re-opening.

This is one of the numerous bank matters in which the Attorney General was called upon to assist in the handling thereof.

In the Circuit Court, Polk County.

Polk County National Bank, Complainant, vs. J. P. Murdaugh, Tax Collector, et al., Defendants.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1926. Application for intervention was filed on behalf of the Comptroller, whereupon order was entered allowing the Comptroller to intervene. By agreement the final decree in the case of First National Bank of Lakeland vs. Murdaugh should govern in this case. The demurrer in the Lakeland case was overruled, whereupon an appeal was taken to the Supreme Court, where the order of the lower court was affirmed on July 19, 1930.

In the Circuit Court, Hardee County.

Polkania Corporation, Complainant, vs. The State Board of Education of Florida, et al., Defendants.

A bill to remove cloud from title to certain land in said bill described was filed herein, and an Answer on behalf of the State Board of Education was filed wherein it was denied that said Board had or claimed any right, title or interest in or to the lands described in said bill of complaint, and asked that this suit be dismissed as to this defendant.

In the Circuit Court, Polk County.

Polk Bond & Mortgage Co., Complainants, vs. Sarah C. Pipkin, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering land in Polk County, the State having been made a

party on account of a judgment obtained against an heir of the Pipkin estate. An answer on behalf of the State was filed on October 6, 1930.

In the Circuit Court, Volusia County.

Frank W. Pope, Complainant, vs. Merchants Bank & Trust Company, et al., and Ernest Amos, as Comptroller, Defendants.

A bill for accounting and for the appointment of a Court Receiver was filed, wherein it was prayed that all securities of said Bank which were in the hands of the defendants, individually or as officers, directors, stockholders or as liquidator of said Bank or either of them, by virtue and by reason of a certain Resolution, plan scheme, device or unlawful and fraudulent preference, were and are the property and assets of said Bank, and that said defendants be forthwith ordered and decreed to restore the same to said Bank, its Receiver or other officer to be appointed by this Court, etc. A Motion to dismiss was filed, also joint demurrers.

In the Circuit Court, Duval County.

Prince Hall Masonic Building Association, Complainant, vs. D. Lee, W. C. Foster Co., W. V. Knott, as State Treasurer, and the City of Jacksonville, Defendants.

A motion to vacate a Final Decree heretofore entered in the above case was filed by the Attorney General on April 5, 1930, said motion setting forth that said final decree was not binding upon the State of Florida for the reason that the Comptroller was not made a party defendant; said proceeding having been brought for the purpose of contesting and cancelling the validity of tax certificate No. 3497, dated August 5, 1929, etc. Order made on April 18, 1930, wherein and whereby the decree in question was adjudged to be null, void and of no effect in so far as the same adjudicated the validity of said tax certificate.

In the United States District Court, Southern District, Miami Division, Dade County.

Public Fire Insurance Company, Complainant, vs. Colonial Bank & Trust Co., et al.

A bill of complaint was filed in this case, wherein Ernest Amos, Comptroller, was made party defendant. A motion to Dismiss was filed by the Attorney General. The case was turned over to the Attorney for the Bank for further handling.

In the Circuit Court, Putnam County.

Putnam Natl. Bank, Complainant, vs. Randall Wells, Tax Collector.

This was a suit brought in an effort to enjoin and restrain the Tax collector of Putnam County from collecting taxes on the shares of stock of the Complainant Bank. A petition for intervention was filed on behalf of the Comptroller, such petition being allowed by the Court, a special demurrer was filed and argument had on February 29, 1930, whereupon an order was entered sustaining said demurrer. Final Decree was entered on December 4, 1930, decreeing the equities to be with the complainant, etc.

In the United States District Court for the Northern District of Florida.

No. 1.

H. C. Rorick, et al., Plaintiffs, vs. The Board of Commissioners of Everglades Drainage District, a Corporation, Defendants.

A bill of complaint was filed in this suit praying for specific performance to compel the delivery of bonds under alleged contract by and between the plaintiffs and the defendants. Motion to dismiss such bill was filed. By consent decree this suit was dismissed.

In the United States District Court for the Northern District of Florida.

No. 2.

H. C. Rorick, et al., Plaintiffs, vs. The Board of Commissioners of Everglades Drainage District, a Corporation, Defendants.

A bill of complaint was filed in this suit wherein plaintiffs, as owners of certain of the bonds already issued and outstanding, pray injunction to prevent the averred impairment of their claimed contract under the bonds issued by the defendant drainage district in conformity with Division 1, Title 7, Revised General Statutes of Florida, 1920, as amended from time to time, and now being embraced in Section 1160 to 1188, Revised General Statutes of Florida, and it is insisted that the bonds were, by virtue of Section 1183, issued under an alleged irrevocable contract with every holder of any bond or coupon, etc. And it is urged that an additional equity of their bill is found in the provision in Section 1178 of the Revised General Statutes, as amended. The prayer of the bill being to enjoin the carrying out of Chapter 12016, Acts of 1927, authorizing the board to issue \$20,000,000 additional bonds of the Everglades Drainage District; and, specifically, to enjoin the board from issuing new bonds, etc. A motion to dismiss was filed by the defendants also brief in support of the motion. Motion to dismiss the bill of complaint was denied, and decretal order for interlocutory injunction was entered. Answer was filed by defendants, also motion to strike parts of the answer was filed by plaintiffs, which motion was argued on December 29, 1928. An order was entered wherein it was decreed that the Act in question does impair the obligation of the plaintiffs' contract, therefore the motion to dismiss the bill was denied, and decretal order for an interlocutory injunction was entered.

In the Circuit Court, Dade County.

Rose Lawn Realty Company Complainant, vs. John W. Martin, et al., Defendants.

This is a suit brought for the purpose of enjoining and restraining the Board of Commissioners of the Everglades Drainage District from selling and delivering to Dillon, Read & Co., and Eldredge & Co., any bonds purporting to be issued under the authority of Chapter 12016, Acts of 1927, etc. Special appearance, also pleas to the jurisdiction of the Court were filed.

District Court of the United States, Southern District of Florida.

Royal Indemnity Co., Complainant, vs. Ernest Amos, Individually and as Comptroller, et al., Defendants.

A bill of complaint was filed herein praying that a temporary re-

straining order be issued enjoining and restraining the Defendant herein from transferring, pledging, hypothecating, conveying, assigning, concealing or dealing with in any manner the trust receipts and or bonds held thereunder, etc., and further that the marketable bonds of the total par value of \$150,000.00 held as collateral and or the trust receipts evidencing same may be sold as the Court may direct, etc. A motion to dismiss for want of equity was filed, and thereupon on August 5, 1930 the Court ordered that the suit be dismissed.

In the Circuit Court, Leon County.

A. N. Sakhnovsky, Complainant, vs. John W. Martin, et al., Defendants.

This is a suit brought for the purpose of seeking to have declared void and unconstitutional certain rules and regulations adopted by the Board of Commissioners of the Everglades Drainage District on April 10, 1928; also for the purpose of enjoining and restraining the board from issuing and delivering to Dillon, Reid & Co., and Eldredge & Co., or anyone else certain bonds issued in pursuance of Chapter 12016, Acts of 1927. Appearance for the defendants were filed, also demurrer, upon which a hearing was had before Judge Love in July, 1928.

In the Circuit Court, Leon County.

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the order of the lower Court was affirmed on October 23, 1929.

In the Circuit Court, Leon County.

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This is a suit brought for the purpose of seeking to enjoin and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

In the Circuit Court, Leon County.

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of Special School District Taxes in Districts No. 1, 4 and 7 of Madison County, Florida. Order entered on March 12, 1929, denying application for a restraining order, or temporary injunction.

In the Circuit Court, Leon County.

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought seeking to enjoin the collection of Special School District Taxes, Highlands County. Consent decree entered on October 8, 1930, whereby the sum of \$1200.00 was to be paid, which sum was paid and suit dismissed.

In the Circuit Court, Leon County.

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, as Comptroller, Defendants.

This suit was brought in an effort to enjoin the collection of Special School District Taxes, Marion County. Case pending on Answer to Bill.

In the Circuit Court, Orange County.

Ruth H. Sears, et al., Complainant, vs. Roy C. McCracken, et ux, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Orange County, the State being made a party by reason of some interest claimed in and to the property covered by the mortgage sought to be foreclosed. Answer for the State was filed on April 7, 1930.

In the Circuit Court, Dade County.

Seminole Bond and Mortgage Co., Complainant, vs. Bank of Bay Biscayne, et al., Defendants.

A bill of complaint was filed in this suit wherein it was prayed that the defendants herein be restrained and enjoined, until further order of this Court, from instituting or prosecuting any suits or actions at law, or in equity, seeking the collection of the sums of money evidenced by certain demand notes of Complainant, and the collateral security given to secure the payment thereof, as described in said bill. Demurrer filed and argument had on August 1, 1930. On August 4 an order was entered dismissing said suit, whereupon an appeal to the Supreme Court was entered. Motion to dismiss was filed, and on December 16, 1930 said motion was granted and suit dismissed.

In the United States District Court, Southern District of Florida.

Seybold Baking Company, and Bethel E. Bellamy, Complainants, vs. Ernest Amos, as Comptroller, and Elizabeth O. Higginbotham, as Tax Collector of Nassau County, Defendants.

This suit was brought for the purpose of testing the validity of Section 15 of Chapter 14491, Acts of 1929, IN RE License Tax on Certain Bakers. Suit dismissed by Complainants on December 6, 1929.

In the Circuit Court, Duval County.

Seybold Baking Company, and Bethel E. Bellamy, Complainants, vs. Ernest Amos, as Comptroller of the State of Florida, and Elizabeth O. Higginbotham as Tax Collector of Nassau County, Florida, Defendants.

This suit was brought for the purpose of testing the validity of Section 15 of Chapter 14491, Acts of 1929, IN RE License Tax on Certain Bakers. Perpetual injunction granted and Final Decree entered on December 22, 1930.

In the Circuit Court, Duval County.

Bertha A. Shine, a widow, Complainant, vs. John H. Rowland, et al., Defendants.

This is a suit brought for the purpose of foreclosing a certain mort-

gage, the State being made a party defendant because it claimed some interest in and to the land covered by the said mortgage sought to be foreclosed. Answer filed on behalf of State.

In the Circuit Court, Duval County.

E. S. Smith, Plaintiff, vs. W. B. Cahoon, as Sheriff in and for Duval County.

This case involved the constitutionality of Chapter 13700, Acts of 1929. Upon hearing of petition of the plaintiff the conclusion was reached that Chapter 13700, Laws of Florida, 1929, violates Sections 1 and 12 of the Declaration of Rights of the Constitution of the State of Florida, and the Fourteenth Amendment of the Constitution of the United States, in so far as the same relates to private carriers for compensation, though it does not affect the validity of the Act as it relates to common carriers. Therefore, it was ordered that Petitioner be discharged from custody, and that the costs be taxed against Duval County, from which ruling the case was taken to the Supreme Court on Writ of Error where the Act in question was upheld. An appeal has been taken from the decision of the Supreme Court of Florida to the Supreme Court of the United States, where the same will be heard during the month of April, 1931.

In the Circuit Court, Orange County.

K. C. Smith, V. W. Cole, Complainants, vs. Robert A. Gray, Secretary of State, State of Florida, Defendant.

A bill of complaint was filed in this suit wherein it sought, among other things, to enjoin the publication and entry in the Public record of Florida the certified copy of a certificate forwarded by the Town Council of the Town of Pinecastle under the provisions of Section 3083, Compiled General Laws of Florida. A demurrer was filed. Demurrer sustained on May 16, 1930.

In the Circuit Court, Polk County.

Snell National Bank, a Corporation, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. Appearance for defendants will be filed on January 7, 1929. By agreement the final decree in the case of First National Bank of Lakeland vs. Murdaugh should govern in this case. The demurrer in the Lakeland case was overruled, whereupon an appeal was taken to the Supreme Court, where the order of the lower court was affirmed on July 19, 1930.

In the Circuit Court, Polk County.

Snell National Bank of Winter Haven, Complainant, vs. Sarah C. Pipkins, et al., Defendants.

This suit was brought for the purpose of foreclosing a certain mortgage covering property in Polk County, the Governor and Attorney General being made parties on account of a judgment obtained against E. H. Pipkin, son of D. M. Pipkin, deceased, dated November 18, 1922, being for the sum of \$250.00. Answer on behalf of the Governor and Attorney General was filed on August 4, 1930. Sale confirmed January 6, 1931.

United States District Court, Jacksonville Division, Southern District of Florida.

Lula G. Solla, Plaintiff, vs. M. G. McNair, Receiver of First National Bank of St. Augustine, et al., Defendant.

A bill of complaint was filed in this suit wherein it was prayed that this Court decree the right of plaintiff in certain moneys collected by said Bank as Trustee and that for the payment thereof plaintiff has a lien upon certain bonds and securities deposited with the State Treasurer under the Trust Act of 1927, etc. Answer of Mr. Knott, State Treasurer, was filed on August 4, 1930.

In the Circuit Court, Flagler County.

South Hastings Drainage District, Complainant, vs. Certain Lands in Flagler County, in said District, and the owners thereon, Defendants.

This was a suit brought in an effort to collect certain delinquent drainage taxes. A special appearance was filed on April 7, 1930.

In the United States District Court, Southern District of Florida.

Standard Coffee Company, Inc., Complainant, vs. W. Kenneth Barnes, as Prosecuting Attorney, et al., Defendants.

Representatives of the Complainant herein were arrested in Pasco County charged with violating sub-section C, of Section 6, Chapter 14491, Acts of 1929, and upon a hearing were released on bond, whereupon a bill for injunction was filed for the purpose of procuring an order and decree of this Court restraining and enjoining the defendants from in any way interfering with the Complainant, its salesmen and employees in the operation of its business. A motion to dismiss the bill was filed and upon hearing the motion was granted, with leave to amend bill in 10 days from Nov. 7th. Amended Bill filed, and suit now pending on Demurrer to amended bill of complaint.

In the Circuit Court, Polk County.

State Bank of Bartow, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. By agreement the final decree in Lake Alfred State Bank

vs. Murdaugh, should also govern in this case. Upon final decree in the Lake Alfred State Bank case it was decreed that the equities were with the complainant. Thereupon, an appeal was entered in the Supreme Court where the decree of the lower court was affirmed on July 19, 1930.

In the Circuit Court, Polk County.

State Bank of Haines City, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. By agreement the final decree in Lake Alfred State Bank vs. Murdaugh should also govern in this case. Upon final decree in the Lake Alfred State Bank case it was decreed that the equities were with the complainant. Thereupon, an appeal was entered in the Supreme Court where the decree of the lower court was affirmed on July 19, 1930.

In the Supreme Court of Florida.

State ex rel. Walter S. Comfort, Jr., et al., Relators, vs. E. B. Leatherman, as Clerk of the Circuit Court of Dade County, Respondent.

This is a mandamus suit wherein it was sought to compel Respondent to permit Relators to redeem certain lands and thereupon to cancel certain tax certificates issued against said lands for the years 1926, 1927 and 1928. Alternative Writ issued, and motion for Peremptory writ was filed together with briefs. Answer for Respondent was filed, also briefs. On April 23, 1930, the Motion for a peremptory writ was denied and ordered that the alternative writ of mandamus be quashed.

In the Circuit Court, Leon County.

State ex rel. W. H. Cox, Relator, vs. Ernest Amos, as Comptroller, Respondent.

This was a case brought by the relator seeking mandamus to compel respondent to pay out of the 1921 appropriation for the State Board of Health a balance or balances claimed to be due said relator for traveling expenses, etc. An alternative writ of mandamus was issued, and motion made by respondent to quash the writ. No action taken by Court.

In the Supreme Court of Florida.

State ex rel. Cudahy Packing Company, Relator, vs. H. Clay Crawford, Secretary of State, Respondent.

Petition for alternative writ of mandamus was filed in this case praying that respondent be commanded to file a certified copy of an amendment to the charter of relator as tendered and to issue thereon a certificate. Alternative writ issued. Respondent filed motion to quash said writ. Case still pending. Suit dismissed in April 1929.

In the Circuit Court, Leon County.

State ex rel. Fred H. Davis, Attorney General, and Iva T. Sprinkle, a widow, etc., Complainants, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought for the purpose of restraining and enjoining the Defendant from auditing the charges of the Publisher of the Baker County Press, a newspaper, and from drawing his warrant for said charges out of any moneys in the Treasury of the State not otherwise appropriated for advertising the delinquent tax sale notice of said County. Comptroller restrained and enjoined from auditing and paying said charges on September 19, 1929.

In the Circuit Court, Levy County.

State ex rel. Fred H. Davis, et al., Complainants, vs. Groves Dowling Hardwood Company, Defendants.

A bill of complaint was filed in this cause wherein it was prayed that an injunction be granted thereby restraining the defendant from cutting timber on their land in Levy County until the lien held by the State and County for taxes had been paid. All taxes paid and Bill dismissed on August 27, 1930.

In the Circuit Court, Leon County.

State ex rel. Vincent C. Giblin, Informant, vs. Ernest Amos, as Comptroller, Respondent.

A petition was filed in this Court praying the issuance of an alternative writ of mandamus, directed to the Respondent, commanding him to pay to the Relator the salary, compensation and emoluments of the office of Judge of the Circuit Court of the Twenty-Second Judicial Circuit, for the period beginning on and including the 20th day of June, 1929, and ending on and including the 7th day of November, 1929. Alternative writ issued, salary paid and suit dismissed.

In the Circuit Court, Leon County.

State ex rel. Eugene Hawkins, Relator, vs. Ernest Amos, Comptroller, Respondent.

A petition in mandamus was filed in this case wherein it was prayed that by order of this Court the respondent be required to draw a warrant upon the Treasurer of the State of Florida, payable to relator in the sum of \$40.00 for each month from June 6, 1927, in the same manner as the Confederate pensioners of the State of Florida are paid and that said warrant each month be delivered to relator. Alternative writ of mandamus issued. A motion to quash was filed in behalf of respondent, also answer. Upon hearing the Court ordered that the motion for a peremptory writ of mandamus be overruled and denied, from which ruling the case was appealed to the Supreme Court, where answer and brief were filed on behalf of the Comptroller. Order of the lower court was affirmed on May 1, 1929.

In the Circuit Court, Leon County.

State ex rel. Highlands County, etc., et al., Relators, vs. Ernest Amos, as Comptroller, Respondent.

Petition for alternative writ of mandamus was filed in this case, wherein it was prayed that the counties of Highlands, DeSoto, Hernando, Martin, Okeechobee and Polk shall have apportioned its proportion of the assessment made and entered by the Comptroller, Treasurer and Attorney General on the 21st day of April, 1927, upon the rolling stock, appurtenance and personal property subject to taxation of the Seaboard Air Line Railway Company, as returned by it as of January 1, 1927. Alternative writ of mandamus issued, and respondent's return was filed on the 29th day of August, 1927.

In the Circuit Court in and for Leon County.

State ex rel. Hillsborough County, etc., Complainants, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought for the purpose of compelling the payment of interest collected on tax sale certificates for the years 1927 and 1928. Answer filed in September 1929. On October 2, 1929, Petition and Alternative writ quashed and suit dismissed.

In the Supreme Court of Florida.

State ex rel. Hillsborough County, et al., Complainants, vs. Ernest Amos, as Comptroller, Defendant.

A petition for an Alternative Writ of Mandamus was filed in this case where in it was prayed that the Comptroller be compelled to pay to complainants a certain per cent of the interest paid on moneys collected for taxes. Alternative writ issued on November 25, 1929, Demurrer and Answer to the Alternative Writ was filed on December 13, 1929. On November 24, 1930 Alternative Writ of Mandamus was quashed.

In the Circuit Court, Leon County.

State ex rel. T. R. Hodges, Relator, vs. Ernest Amos, as Comptroller, Respondent.

A petition for an alternative writ of mandamus was filed in this suit, wherein was prayed that Respondent be required to pay to Relator a certain sum claimed to be due him as Shell Fish Commissioner of the State of Florida. On March 18, 1930, alternative writ issued, on March 22, a motion to quash said writ also return was filed, thereupon on April 26, 1930 Court ordered suit dismissed, from which ruling case was appealed to the Supreme Court where still pending.

In the Supreme Court of Florida.

State ex rel. Sterling M. Hooper, Relator, vs. W. W. Stripling, as Tax Collector of Marion County, Respondent.

A petition was filed in this suit praying that an alternative writ of mandamus issue thereby requiring Respondent to accept the personal tax upon a certain automobile which tax had been refused unless Petitioner would pay the remainder of the personal assessment against him. Respondent's return to alternative writ was filed on Feb-

ruary 18, 1930. On May 2, 1930 peremptory writ of mandamus was granted.

In the Supreme Court of the State of Florida.

State ex rel. W. V. Knott, et al., Plaintiffs, vs. George Willmer, et al., Creditors of Citizens Bank & Trust Co., and Geo. W. Tedder, as Judge, and as Receiver, Defendants.

This suit was for the purpose of having determined at the earliest possible moment whether the liquidation of the affairs of the Citizens Bank & Trust Company of Tampa should proceed under the laws of the State of Florida, or the same should be taken in charge by a chancery receiver to be liquidated, controlled and directed as some Circuit Court should direct and order, subject to innumerable appeals. Rule to show cause was issued on December 6, 1930, whereupon motion was filed asking that said rule be dismissed. Answer was filed on December 15, 1930, and the brief of the Attorney General was filed on December 30, 1930.

In the Supreme Court of Florida.

State ex rel. Fred H. Davis, Attorney General, Petitioner, vs. The Honorable E. C. Love, one of the Judges of the Circuit Court, and Massachusetts Bonding & Ins. Co., Respondents. and The Honorable E. C. Love, one of the Judges of the Circuit Court, and C. F. Lytle. 2 cases.

These cases arose out of separate petitions for writs of prohibition directed to the Hon. E. C. Love and Lytle in the one instance, and directed to the same Judge and Bonding Company in the other instance, seeking a peremptory writ of prohibition prohibiting Judge Love from proceeding to hear and determine two certain suits pending before him in the Circuit Court of Leon County, in which Lytle and the Bonding Company respectively are plaintiffs and the State Road Department is defendant. Alternative writs of prohibition were issued, without notice, in each of the cases at bar. Judge Love filed his separate answer in each case. Lytle and the Bonding Company filed motions to quash and answers to the alternative writ. Briefs were filed. On February 14, 1930 the Supreme Court ordered that the motion to quash be denied and that a peremptory writ of prohibition be awarded, as prayed, in each of the two cases.

In the Circuit Court, Leon County.

State ex rel. Manatee County Building & Loan Association, Complainant, vs. H. Clay Crawford, Secretary of State, Defendant.

This is a suit wherein complainant prays that writ of mandamus be granted, commanding and requiring defendant to immediately file in his office a certified copy of resolution increasing the capital stock of complainant, and to duly certify to copy thereof to be filed in office of the Clerk of the Circuit Court of Manatee County, Florida.

In the Supreme Court of Florida.

State ex rel. Ellis Woodworth, Relator, vs. Ernest Amos, Comptroller, Respondent.

A petition in Mandamus was filed herein praying that Respondent

be compelled to pay to Relator his salary as an Inspector in the Bureau of Inspection of the Department of Agriculture of the State of Florida for the months of February, March, April, May and June, 1928, which amounted to \$959.84. Alternative writ issued on October 9, 1928, whereupon Answer was filed on October 28, 1928; also Motion to Quash, which motion was denied July 26, 1929, and on August 1, 1929 Peremptory Writ was awarded.

In the Circuit Court, Escambia County.

State of Florida, Complainant, vs. Overstate Transportation Company, Respondent.

This suit was brought for the purpose of collecting license tax on certain motor busses operated for hire by the Respondent while engaged in interstate business. A decree was entered wherein it was ordered and decreed that the equities were with the defendant and that the complainant was not entitled to the relief prayed, and that the bill of complaint be dismissed, whereupon an appeal was taken to the Supreme Court where it is still pending.

In the Circuit Court, Polk County.

Sterling Building & Loan Association, Complainant, vs. Sarah C. Pipkin, et al., Defendants.

This is a mortgage foreclosure suit covering property in Polk county, the State being made a party defendant because it claimed some interest in and to the land covered by said mortgage sought to be foreclosed. Formal Answer was filed on behalf of the State.

In the Circuit Court, Gadsden County.

Strickland Truck Line, et al., Complainants, vs. Ernest Amos, Comptroller, Defendant.

This suit was brought in an effort to enjoin the collection of the mileage tax as provided for in Chapter 13700, Acts of 1929. A temporary injunction was granted on November 8, 1929.

In the Circuit Court, Polk County.

D. S. Story, et ux., Complainants, vs. Ernest Amos, as Comptroller, and Charles I. Dwigins, as Liquidator, Defendants.

A bill for accounting and for preference to the extent of \$2,060.36 was filed herein and among other things it was prayed that an order be made directing the said sum to be paid to your orators prior to payments to general creditors of said bank, etc. Appearance for the Comptroller was filed, and suit then turned over to Attorney for Liquidator for further handling.

In the District Court of the United States, Northern District of Georgia, Atlanta Division.—No. 514.

State of Florida, and A. S. Wells, E. S. Mathews and Mamie G. Eaton, as and Constituting Florida, Railroad Commission, Petitioners, vs. United States of America and Interstate Commerce Commission, Defendants.

This was a proceeding brought by the State of Florida, through the Attorney General, joined in by the Railroad Commission as a party

plaintiff, to restrain the enforcement of an order made by the Interstate Commerce Commission in a case known as Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company, 146 I. C. C. 717, Docket No. 183464, which order of the Interstate Commerce Commission if enforced would have the effect of annulling the right of the State of Florida to regulate interstate rates on the transportation of logs by rail over the Atlantic Coast Line Railroad from points in Florida to other points entirely within the State of Florida. The pleadings alleged that the order of the Interstate Commerce Commission invalidates the sovereign rights of the State of Florida to regulate its own internal affairs, and that a sufficient basis of Federal power was not shown on the record. There were numerous arguments made before various courts, and the case was finally argued before the Supreme Court of the United States on its merits on an appeal from an adverse decision where such decision was reversed on January 5, 1931.

In the Circuit Court, Leon County.

Tampa & Gulf Coast Railroad Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

In the Circuit Court, Leon County.

Tampa & Gulf Coast Ry. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the Order of the lower court was affirmed on October 23, 1929.

In the Circuit Court, Leon County.

Tampa Northern R. R. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the order of the lower court was affirmed on October 23, 1929.

In the Circuit Court, Leon County.

Tampa Northern R. R. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

In the Circuit Court, Leon County.

Tavares & Gulf Railroad Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928. Testimony was taken, briefs filed and arguments had before Judge Jones on July 22, 1930, but thus far no decision has been rendered.

In the Supreme Court of Florida.

Townsend-Burns-Ridgeway, et al., Appellants, vs. Horace G. Reese, Jr., Appellee.

A bill of complaint was filed in this suit to foreclose the tax certificate set forth therein, said suit being brought under and by virtue of Chapter 14572, Acts of 1929. The State at large being vitally interested in this matter the Attorney General filed a petition for intervention, which petition was granted by the Supreme Court on April 8, 1930, and brief was filed. Order lower court affirmed.

In the Circuit Court, Leon County.

Park Trammell, et al., as the Board of Commissioners of State Institutions, Plaintiffs, vs. DeLeon Naval Stores Company, a Corporation, et al., Defendants.

This is a suit brought against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for a balance due by it on account of its contract with the Board of Commissioners of State Institutions for the lease of such prisoners. The amount due was \$6,060.74. The executors of the estate of J. B. Conrad, deceased, have paid to the Board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. The case is still pending before the Court.

In the District Court of the U. S., Southern District of Florida.

Union Mortgage and Finance Corp., Complainant, vs. Philip P. Licata, et al., Defendants.

This is a suit brought for the purpose of foreclosing a certain mortgage, the State being made a party defendant because it claimed some interest in and to the land covered by said mortgage sought to be foreclosed. An answer on behalf of the State was filed.

In the Circuit Court, Leon County.

Weis-Patterson Lbr. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This suit was brought for the purpose of restraining and enjoining the State Comptroller from enforcing or attempting to enforce the provisions of House Bill No. 170, Chap. 13756, Acts of 1929, being an Act providing a Tax on Petroleum Products kept, stored or used in this State which have not been subject to the payment of a license tax for sale of same under any other statutes of this state, etc. Temporary Injunction denied, and order sustaining demurrer to Bill entered August 16, 1929. No appeal was entered in this case, though it was agreed that all parties

would abide the judgment to be rendered in the Sheip cases, in which case the judgment of the lower court was affirmed.

In the Circuit Court, Hillsborough County.

George Willmer, et al., Complainants, vs. Citizens Bank & Trust Co., et al., Defendants.

A bill of complaint was filed in this suit praying among other things that a Receiver be appointed for the Citizens Bank & Trust Company. A Rule to show cause was issued, and an answer on behalf of the Comptroller and State Treasurer was filed on August 13, 1930. A motion to dismiss was also filed. Objections to the jurisdiction of the court were also filed by the Comptroller and State Treasurer, including a general demurrer to the bill. A hearing was had before Judge Tedder on Sept 25, 1930, and on December 3 the Judge entered a decree overruling all objections and set the case for further hearing on December 10. To stop any further proceedings a writ of prohibition was applied for on December 7, and a rule nisi was granted. See case of Knott vs. Willmer hereinbefore stated.

In the Circuit Court, Dade County.

William H. Wood, et al., Complainant, vs. W. T. Hardie, et al., Defendants.

This is a mortgage foreclosure suit, the state being made a party by reason of some prior lien on the property covered by the mortgage sought to be foreclosed. An answer on the part of the State was filed.

District Court of the United States, Southern District of Florida.

Woods-Young Company, Complainant, vs. Maryland Casualty Company et al., Defendant,

This is a suit brought for the purpose of attacking the constitutionality of Chapter 11829 of the Acts of 1927 as it pertains to service by publication on domestic corporations which failed to maintain an agent in office in compliance with the statutes. Temporary Injunction was denied, but suit not dismissed but left pending until complainant had attempted to get his rights litigated in the Courts of the State.

In the Supreme Court of Florida.

Woods-Young Company, Complainant, vs. Hon. Geo. W. Tedder and Maryland Casualty Company, Defendant.

This suit was first brought in the United States District Court where the constitutionality of Chapter 11829, Acts of 1927 was attacked, and where the bill for injunction was denied, whereupon a petition for writ of prohibition was filed in May 1930 in the Supreme Court, Demurrer for Defendants were filed on May 5, 1930; also briefs have been filed.

In the Circuit Court, Highlands County.

M. W. Woolsey, Complainant, vs. Ernest Amos, as Comptroller, et al., Defendants.

This suit was brought for the purpose of having decreed the amount of taxes due for the years 1926, 1927 and 1928, etc., and to have certain other taxes decreed illegal and void, and that complainant be al-

lowed to redeem said lands and that certain tax certificates be cancelled. Answer for defendant Ernest Amos was filed on October 7, 1929.

In the United States District Court, Southern District of Florida, Tampa Division.

I. Zemurray, Complainant, vs. Del Oro Groves, et al., Respondents.

A bill of complaint was filed in this suit wherein it was prayed among other things that a substitute Trustee be appointed in lieu of the Guaranty Title & Trust Company because said Trust Company had become insolvent and closed its doors on or about June 1930, and its affairs now being in the hands of Ernest Amos, Comptroller, and that said Comptroller be required to submit to said successor Trustee an accounting, etc. An Answer on behalf of the Comptroller was filed.

In the Circuit Court, Volusia County.

Margaret R. Zimmerschied, Inc., Complainant, vs. C. L. Vining, as Receiver of East Coast Bank & Trust Co., et al., Defendants.

This is a suit brought for the purpose of having returned to Complainant the amount of \$10,000 held by the Receiver, which amount it is claimed was in his personal safety deposit box, which said safety deposit box was in a vault located in the banking house of the East Coast Bank & Trust Company, etc. An appearance was filed on behalf of the defendants Ernest Amos, as Comptroller, and W. V. Knott, as State Treasurer.

IN BANKRUPTCY

In the United States District Court, Southern District of Florida.
Anna E. Curtis, et al., Petitioners, vs. Dade County Security Company, a Florida Corporation, Defendants.

A petition was filed in this case seeking to have the Dade County Security Company adjudged a bankrupt. A petition for intervention was filed by Ernest Amos, Comptroller, and an order entered allowing such intervention. There was also a petition for intervention and motion to dismiss filed by Equitable Trust Company of New York, and an order entered allowing such intervention. A motion was filed by Dade County Security Company to dismiss the involuntary petition. There was an order dismissing the petition on February 8, 1928, from which order an appeal was taken to the United States Circuit Court of Appeals, Fifth Circuit, where the order of the lower court was affirmed.

In the District Court of the United States, Southern District of Florida.
Lloyd-Skinner Development Company, a Corporation, Bankrupt.

There was issued in this case a rule to show why this court should not inquire into the amount due for state and county taxes for the years 1926, 1927, 1928 and 1929, respectively, from the properties involved and described in the petition of the trustee in bankruptcy. An answer on behalf of the Comptroller was filed.

In the District Court of the United States, Southern District of Florida.
Orlando Bank & Trust Company,
In Re: Depository for Bankruptcy Funds.

A Rule to show cause issued in this case requiring the Comptroller

to pay to the Clerk a statutory fee as a commission on bonds put up with the Clerk for deposits of bankruptcy funds. Answer to the Rule was filed, also brief. Case still pending.

IN GARNISHMENT

In the County Court, Hillsborough County.

Barrack Publishing Company, Plaintiff, vs. Fred Sloan, doing business as Sloan Fruit Company, Defendant.

State Bank of Webster, through Ernest Amos, as Comptroller, and John F. Hays, Receiver, Garnishees.

This was a garnishment proceeding wherein the Comptroller filed his answer wherein he stated that he did not have in his hands, custody or control as Comptroller of the State of Florida, any of the goods, chattels, rights, credits, moneys or effects belonging to Fred Sloan, doing business as Sloan Fruit Company, nor was he indebted to said defendant, and averred also that he was advised and believed that said facts also applied to The State Bank of Webster.

IN PROBATE

In the County Judge's Court, Hardee County.

IN RE: Estate of T. J. Hathaway.

The duly appointed and qualified Administrator of the above estate filed his petition setting forth that deceased had left no heirs at law and that the only person interested in said estate is the State of Florida, and therein praying that an order be made authorizing and directing said administrator to take possession and charge of said estate for the purpose of paying off the debts of the deceased. Pending on Answer to an amended petition.

QUO WARRANTO

Mr. Henry Gibson, Miami, Florida. January 7, 1929.

This suit was brought for the purpose of testing the right of the Town of Miami Shores to incorporate certain lands within its corporate limits, and that said town in attempting to exercise and enjoy such franchise does so without lawful authority to the prejudice and wrong of the people of the State of Florida.

Messrs. Price, Price, Kehoe & Kasewitz, Miami, Florida. January 26, 1929.

This suit was brought for the purpose of testing the rights of Louis F. Snedigar to hold the office of Mayor of the City of Miami Beach, Florida.

Messrs. Price, Price, Kehoe & Kasewitz, Miami, Fla. January 26, 1929.

This suit was brought for the purpose of testing the right of one John H. Levi, C. L. Clements, H. M. Bankhead, Harry M. Hice and C. D. Floyd, to hold the office of City Aldermen in the City of Miami Beach, Florida.

Hon. Martin H. Long, Jacksonville, Florida. February 25, 1929.

This suit was brought for the purpose of testing the right of one W. Henry Bryant to act as Attendance Officer of the Board of Public Instruction for the County of Duval.

Messrs. Burdine, Terry & Fleming, Miami, Florida. February 26, 1929.

This suit was brought for the purpose of testing the authority of the Marion Mortgage Company to perform trust functions and to act as Trustee in certain matters.

Mr. Will O. Murrell, Sarasota, Fla. March 11, 1929.

This suit was brought for the purpose of testing the validity of the so called Florida Real Estate Commission Act and asking that Walter W. Rose, Thomas C. Hammond and William R. Rannie answer to the people by what authority they claim to use, enjoy and exercise and perform the franchise, functions and powers of the office of Real Estate Commissioners, etc.

Messrs. Price, Price, Kehoe & Kasewitz, Miami, Fla. April 3, 1929.

This suit was brought for the purpose of testing the right of the City of Fort Lauderdale to exercise certain corporate rights and privileges over certain territory described in the Information filed in this suit.

Meessrs. Winters, Foskett & Wilcox. April 29, 1929.

This suit was brought for the purpose of testing the right of the Town of Palm Beach to exercise certain corporate rights and privileges over certain territory described in the information filed in said suit.

Mr. James M. Carson, Miami, Fla. April 30, 1929.

This suit was brought for the purpose of testing certain rights and powers exercised by the Town of Boca Ratone.

Mr. Pat Johnson, Kissimmee, Fla. May 10, 1929.

This suit was brought for the purpose of testing the right of the City of Eau Gallie to exercise certain corporate rights and privileges over certain territory described in the Information filed in this suit.

Mcfarlane, Pettingill, Mcfarlane & Fowler. May 15, 1929.

This was a suit brought for the purpose of testing the right of the Town of Largo, Pinellas County, to exercise certain corporate rights and privileges over certain territory described in the information filed in this suit.

Loftin, Stokes & Calkins, Miami, Fla. May 15, 1929.

This was a suit brought for the purpose of testing the right of the City of Fort Lauderdale to exercise certain corporate rights and privileges over certain territory described in the Information filed in this suit.

McCune, Hiaasen & Fleming, Fort Lauderdale, Fla. June 20, 1929.

This was a suit brought for the purpose of testing by what authority of law Vincent C. Giblin was acting as Circuit Judge of the Twenty-Second Judicial Circuit of the State of Florida.

Mr. John E. Mathews, Jacksonville, Fla. July 6, 1929.

This suit was brought for the purpose of testing the constitutionality of Senate Bill No. 1, now Chapter 14486 Acts of the Extraordinary Session of the Legislature of 1929.

Henry K. Gibson, and Miller & McKay, Miami, Fla. July 22, 1929.

This suit was brought for the purpose of testing by what right the Town of Miami Shores has acted, and is still acting as a Municipal Corporation, and by what right certain parties named in the information are claiming to be the Mayor, Councilmen, City Clerk, Tax Assessor, Tax Collector and Town Marshall of said town.

Mr. A. W. Touchton, Winter Haven, Fla. August 12, 1929.

This suit was brought for the purpose of testing the validity of Chapter 11301, Laws of Florida, Special Acts of 1925, IN RE additional corporates powers over certain territory in the City of Winter Haven.

Messrs. Jackson, Dupree & Cone, Tampa, Fla. August 28, 1929.

This suit was brought for the purpose of testing by what right or authority C. L. Knight was acting as Liquidator of the Citizens Bank & Trust Company of Tampa.

Messrs. Stokes & Calkins, Miami, Fla. August 28, 1929.

This was a suit brought for the purpose of testing by what right the City of Homestead claimed to exercise, employ and perform the functions, powers and privileges of a municipality in, upon and over certain lands in the information described.

Mr. W. J. Martin, Inverness, Fla. September 6, 1929.

This suit was brought for the purpose of testing by what right the City of Inverness claimed to exercise the power and authority to levy and collect certain taxes, and praying that an order be rendered wherein Chapter 11550, Acts of 1925, be declared unconstitutional and void, etc.

Mr. Clyde W. Atkinson, Tallahassee, Fla. September 14, 1929.

This suit was brought to test the right of the School Trustees of Special School Tax District Number Four of Wakulla County, Florida, to hold said office and exercise the pretended powers thereof, under color of the results of a Special election held in Special Tax School Districts Number Four, Five and Six of said County.

Messrs. Smith & Kanner, Stuart, Fla. September 23, 1929.

This suit was brought for the purpose of testing the right of the Board of Supervisors of the Palm City Drainage District to exercise the powers, functions and privileges of a Drainage District, upon and over the lands of the Co-Relators situated in Martin County, Florida.

Messrs. Campbell & McLean, Tampa, Fla. October 17, 1929.

This was a suit brought for the purpose of testing by what right or authority the City of Dunedin claims to exercise, employ and perform the functions, powers, privileges and franchises of a municipality in, upon and over certain lands in the information described.

Mr. Charles H. Crim, Fort Lauderdale, Fla. October 10, 1929.

This suit was brought to test by what right or authority the City of Hollywood and the City of Dania claim to exercise, employ and perform the functions, powers and privileges of municipalities in, upon and over certain lands mentioned and described in the information, etc.

Mr. J. R. Bullock, West Palm Beach, Fla. October 30, 1929.

This suit was brought to test by what right or authority the Town of Boynton claims to exercise the functions, privileges, powers and franchises of a municipality in, upon and over the lands of the co-relators as in said information set forth.

Mr. Thomas Palmer, Tampa, Fla. November 7, 1929.

This suit was brought to test by what right or authority the town of Safety Harbor claims to exercise, employ and perform, the functions, powers, privileges and franchises of a municipality, in, over and upon certain lands of the co-relators in said information described.

Mr. E. D. Beggs, Pensacola, Fla. November 16, 1929.

This suit was brought for the purpose of testing by what right or authority certain officials of the Town of Camp Walton claim to exercise, enjoy and perform the franchise, functions and powers of their said offices.

Messrs. Bussey, Johnston & Lilienthal, West Palm Beach, Fla. December 27, 1929.

This suit was brought in an effort to have excluded from the town of Boynton a strip of ocean frontage about three-fifths of a mile in length at the extreme northern limit of the town, and lying North of the South Lake Worth Inlet.

Messrs. Hall & English and W. G. Miller, Fort Lauderdale, Fla. January 11, 1930.

The purpose of this suit was to oust the City of Hollywood from the jurisdiction of certain lands originally incorporated within the City by Special Act of 1925 creating said City, and thereafter said law was amended by Special Act of 1927 thereby eliminating certain lands, but over which lands the City is exercising corporate jurisdiction and franchise.

Hon. Isaac A. Stewart, DeLand, Fla. January 7, 1930.

This was a suit brought for the purpose of testing the right of the City Manager of DeLand, Florida, to hold his office.

Messrs. Gaines & Futch, Leesburg, Fla. January 17, 1930.

This suit was brought for the purpose of testing by what authority the Board of Supervisors of Jumper Creek Drainage District in Sumter County claim to exercise the offices, franchises and liberties of such Drainage District.

Messrs. Crim & Cook, Fort Lauderdale, Fla. January 20, 1930.

This suit was brought for the purpose of testing by what right or authority the City of Hollywood, a Municipal Corporation, claims to exercise, employ and perform the functions, powers and privileges of a Municipality upon and over certain lands in the Information described.

Mr. Giles J. Patterson, Jacksonville, Fla. January 24, 1930.

This suit was brought for the purpose of testing by what right or authority the City of Jacksonville Beach has usurped the corporate rights

and privileges over certain territory described in the Information filed herein.

Messrs. Bussey, Johnston & Lilienthal, West Palm Beach, Fla. February 5, 1930.

This suit was brought to test by what right or authority of law the Town of Lantana, a municipal corporation, claims to exercise, employ and perform the functions, powers and privileges of a municipality, in, upon and over certain lands described in the Information filed herein.

Hon. C. Y. Byrd, Delray Beach, Fla. March 11, 1930.

This suit was brought to test by what grant, warrant or authority of law the City of Delray Beach claims to exercise, employ and perform the functions, powers and privileges of a municipality in, upon and over certain lands described in the Information filed herein.

Messrs. Hilburn & Merryday, Palatka, Fla. March 15, 1930.

This suit was brought against members of the Board of Bond Trustees of Putnam County, Florida, to test the constitutionality of Chapter 14627, Acts of the Extraordinary Session of the Legislature of 1929.

Mr. Clyde W. Adkinson, Tallahassee, Fla. April 2, 1930.

This suit was brought against the Trustees of Special Tax School District Number Four, Wakulla County, Florida, and Members of Board of Public Instruction, praying that they be required to answer by what warrant they claim to hold out and to exercise the powers and duties of said office.

Messrs. Huffaker & Edwards, Bartow, Fla. April 8, 1930.

This suit was brought against the City of Sebring praying that they be required to prove to the satisfaction of the Court by what authority it exercises corporate powers over certain territory added to the City of Sebring by Ordinance Number 110, Approved March 9, 1926, and by Chapter 14371, Laws of Florida, Special Acts of 1929, therein alleged to be unconstitutional and void.

Messrs. Patson & Pasco & Brown, Pensacola, Fla. April 19, 1930.

Authority was given by the Attorney General to bring this suit for the purpose of endeavoring to have set aside a final decree of divorce, on the ground of fraud.

Mr. W. M. Huber, Miami, Fla. April 22, 1930.

This is a suit brought by the Florida Land Holding Corporation against the City of Fort Lauderdale wherein it is prayed that said City answer by what grant, warrant or authority of law it claims to exercise, employ and perform the functions, powers and privileges of a municipality in, upon and over the lands of the Relators herein in the Information described.

Mr. Louis Allen Harris, Miami, Fla. April 26, 1930.

This is a suit brought against Myron Russell wherein it is prayed that said Russell answer by what warrant or authority he claims to use,

enjoy, exercise and perform the duties, powers and functions of the franchise of Pilot for the Port of Key West, Florida.

Mr. R. A. Henderson, Jr., Fort Myers, Fla. May 5, 1930.

This is a suit brought against the City of Avon Park, wherein it is prayed that said City answer by what warrant or authority of law it claims to exercise, employ, and perform the functions, powers, privileges and franchises of a municipality in, upon and over certain lands described in the Information.

Messrs. Kearley, Fisher, VanMetre & Chapman, West Palm Beach, Fla. May 6, 1930.

This suit was brought against the Town of Lantana, wherein it was prayed that said Town be required to answer by what grant, warrant or authority of law it claims to exercise, employ and perform the functions, privileges and powers of a municipality over said lands described in the Information.

Messrs. McCume, Hiassen & Fleming, Fort Lauderdale, Fla. May 9, 1930.

This suit was brought against the Town of Pompano, wherein it was prayed that said town be required to answer by what grant, warrant, or authority of law it claims to exercise, employ and perform the functions, powers and privileges of a municipality in, upon and over lands in the Information described.

Mr. W. M. Huber, Miami, Fla. June 4, 1930.

This suit was brought against the Town of Ojus, and it was prayed that said town be required to answer to the State and to the Co-Relator by what grant, warrant, or authority of law it claims to exercise, employ, and perform the functions, powers and privileges of a municipality in, upon and over the lands of said Co-Relator in the petition described.

Mr. J. W. Salisbury, West Palm Beach, Fla. June 19, 1930.

This suit was brought for the purpose of testing the constitutionality of Chapter 10002, Special Acts of 1923, validating the Pahokee Drainage District.

Thomas Palmer, Tampa, Fla. July 20, 1930.

An Information was filed in this suit wherein it charged that the Town of Gulfport has unlawfully usurped, and exercised, and is attempting to unlawfully usurp and exercise, the functions, privileges, power of taxation and otherwise, and franchise of a municipality in and over certain lands in said Information described.

Messrs. Leitner & Leither, Arcadia, Fla. July 21, 1930.

Authority was granted for the purpose of bringing suit against Arthur A. Harrington, wherein it was prayed that Harrington be required to answer by what warrant or authority of law he claims to exercise the office, franchise, liberties and powers as committeeman of the Republican Executive Committee for Precinct No. 9 in DeSoto County, Florida.

Mr. E. L. Bryan, Tampa, Fla. July 23, 1930.

Authority was granted for the purpose of bringing suit against the City of Auburndale to test by what authority of law it claims to exercise, employ and perform the functions, powers and privileges of a municipality in, upon and over the lands in the Information described.

Mr. E. L. Bryan, Tampa, Fla. July 23, 1930.

This is another suit wherein authority was granted to test by what authority or law the City of Auburndale was usurping, exercising and enjoying the functions, privileges, powers and franchises of a municipality over lands in the Information described.

Hon. D. L. Southard, West Palm Beach, Fla. July 29, 1930.

This suit was brought to test the validity of Chapter 10462, Special Acts of the Legislature 1925, on the ground that said Act attempts to include certain land in the Information described, said land being within the corporate limits of the town of Deerfield, contrary to the provisions of the Declaration of Rights contained in the Constitution of the State of Florida protecting the rights of private property, etc.

Hon. Elvin A. Bass, Pahokee, Fla. August 28, 1930.

This suit was brought against Special Road and Bridge District No. 22 of Palm Beach County, wherein it was prayed that said District be required to answer by what grant, warrant, or authority of law it claims to exercise, employ and perform the functions, powers and privileges of a Special Road and Bridge District in, upon and over certain lands described in the Information.

Messrs. Feinberg & Johnson, Tampa, Fla. October 6, 1930.

This suit was brought for the purpose of testing by what right or authority of law the City of Plant City claims to exercise, employ and perform the functions, powers, privileges and franchises of a municipality in, upon and over certain lands in the Information described.

Messrs. Loftin, Stokes & Calkins, Miami, Fla. September 22, 1930.

This suit was brought against the City of Fort Lauderdale wherein it was prayed that an Answer be required stating by what grant, warrant, or authority of law it claims to exercise, employ and perform the functions, powers and privileges of a municipality in, upon and over the lands described in the Information.

Messrs. Cary D. Landis and A. H. Odom, Palatka, Fla. November 12, 1930.

This suit was brought to contest the right of R. C. Howell to hold the office of Sheriff of Putnam County, Florida.

Messrs. Sutton, Tillman & Reeves, and Edwin Brobston, Tampa, Fla. November 10, 1930.

An Information in Quo Warranto was filed in this suit wherein it was prayed that the Town of Lake Placid, a municipal corporation, be required to state by what warrant or authority of law it claims to exercise, employ and perform the functions, powers, privileges and franchises of a municipality in, upon and over the lands described in said Information.

Fred H. Davis, Attorney General, Tallahassee, Fla. November 26, 1930.

This suit was brought by the Attorney General to test the question of whether or not T. H. Therrell was the properly appointed Liquidator for the Bank of Bay Biscayne, and if such appointment was confirmed.

Hon. Tom Stewart, DeLand, Fla. December 2, 1930.

This suit was brought for the purpose of ascertaining by what right or authority D. W. Whitehurst holds, exercises and usurps the powers and duties of the office of Chief of Police of the Town of Orland, Volusia County, Florida.

Messrs. Winters, Foskett & Wilcox, West Palm Beach, Fla. December 15, 1930.

This suit was brought for the purpose of having excluded certain lands now within the corporate limits of Palm Beach, Florida.

Messrs. Winters, Foskett & Wilcox, West Palm Beach, Fla. December 15, 1930.

This suit was brought for the purpose of having excluded certain lands, in the Information mentioned, from the corporate limits of the Town of Jupiter, Florida.

Mr. Erle B. Askew, St. Petersburg, Fla. December 27, 1930.

This suit was brought for the purpose of having excluded certain lands, in the Information mentioned, from the corporate limits of the City of Safety Harbor, Florida.

X.

TABULATED REPORT OF CRIMINAL CASES

Handled by the Attorney General in which Opinions were filed by the Supreme Court During the Years 1929 and 1930.

CASES DISPOSED OF DURING JANUARY TERM, 1929.

Name of Offender	Offense	County	Court	Disposition
John Q. Adams, Jr.		Okaloosa	Circuit	Dismissed
A. M. Alfonso	Carnal Intercourse	Dade	Criminal ..	Reversed
W. H. Arnold et al.	Habeas Corpus	St. Johns	Circuit	Dismissed
L. S. Brannon	Grand Embezzlement	Jackson	Circuit	Reversed
J. H. Buchanan	Murder 1st Degree	Taylor	Circuit	Affirmed
George Burns	Highway Robbery	Dade	Criminal ..	Reversed
George Burns	Highway Robbery	Dade	Criminal ..	Reversed
Leroy R. Busch	Non-Support of Wife	Dade	Criminal ..	Reversed
J. G. Cooper	Habeas Corpus	Charlotte	Circuit	Reversed
A. B. Christie	Rape	Orange	Circuit	Reversed
Coleman Davis	Larceny	Holmes	Circuit	Affirmed
Dowling vs. Roberts	Habeas Corpus	Duval	Circuit	Dismissed
Dozier W. Drawdy	Crime Against Nature	St. Lucie	Circuit	Affirmed
Eddie Gaines	Assault to Murder	Marion	Circuit	Affirmed
Jim Gavin	Carnal Intercourse	Okaloosa	Circuit	Affirmed
Jack Gordon, et al.	Larceny	Dade	Criminal ..	Reversed
Leroy Goshea	Murder 1st Degree	Palm Beach	Circuit	Affirmed
Amon Greggs	Altering Marks	Walton	Circuit	Reversed
O. C. Heath	Larceny	Jackson	Circuit	Reversed

William A. Hicks	Murder 1st Degree	Broward	Circuit	Reversed
Randolph Hood	Larceny	Walton	Circuit	Affirmed
Theodore Johnson	Larceny	Pinellas	Circuit	Dismissed
A. R. Key	Embezzlement	Seminole	Circuit	Dismissed
A. B. Lindsay	Carnal Intercourse	Santa Rosa	Circuit	Reversed
Hattie McDuffie		Hillsborough	Criminal	Dismissed
George McPherson	Larceny	Alachua	Circuit	Affirmed
Bascom Overstreet	Possessing Liquor	Manatee	Circuit	Dismissed
Alonzo Padgett	Murder 1st Degree	Taylor	Circuit	Dismissed
Sam Paliemo		Hillsborough	Criminal	Dismissed
Eddie Pell	Murder 2nd Degree	Volusia	Circuit	Reversed
J. E. Pickeron, et al.	Aggravated Assault	Holmes	Circuit	Affirmed
Lee Raustad	Murder 1st Degree	Dade	Criminal ..	Affirmed
Louis Ray	Drunkenness	Taylor	Circuit	Affirmed
M. Richmond	Manslaughter	Dade	Criminal ..	Affirmed
Chester Robinson	Manslaughter	Volusia	Circuit	Affirmed
Paul Rodriquez		Hillsborough	Criminal ..	Dismissed
Robert S. Rogers	Uttering Forged Instrument	Marion	Circuit	Reversed
Robert Rowe, et al.	Robbery	Hillsborough	Criminal ..	Reversed
Archie Shepard	Bastardy	Monroe	Circuit	Affirmed
Karl Soles	Manslaughter	Seminole	Circuit	Affirmed
Paul Timmons	Possessing Liquors	Marion	Circuit	Reversed
Bud Wade	Larceny	Walton	Circuit	Affirmed
N. P. Walls	Obtaining Money by False Pretense	Dade	Criminal ..	Reversed
John Welch	Larceny	Dixie	Circuit	Reversed
Joe Whiting, et al.	Assault and Abetting Robbery	Hillsborough	Criminal ..	Affirmed
J. D. Whitman	Manslaughter	Madison	Circuit	Affirmed
J. E. Williams	Habeas Corpus	Suwannee	Circuit	Affirmed

Name of Offender	Offense	County	Court	Disposition
M. Williams and Joe Bright		Hillsborough	Criminal	Dismissed
Bill Young	Violation Prohibition Law	Hillsborough	Circuit	Affirmed
John Q. Adams, Sr.		Okaloosa	Circuit	Dismissed
John Q. Adams, Jr.		Okaloosa	Circuit	Dismissed
J. D. Albritton and J. W. Miller ...	Larceny	Polk	Criminal	Dismissed
Frank Alvarez		Hillsborough	Criminal	Dismissed
Charlie H. Ange	Defamation of Character	Dixie	Circuit	Reversed
William H. Arnold	Habeas Corpus	St. Johns	Circuit	Affirmed
A. I. Baker	Manslaughter	Holmes	Circuit	Affirmed
Leon Black		Walton	Circuit	Dismissed
Willie Boyett		Hillsborough	Criminal	Dismissed
R. H. Bradford	Habeas Corpus	Leon	Circuit	Discharged
Calvin Brown	Possessing Burglar Tools	Hillsborough	Criminal	Remanded
Calvin Brown	Possessing Burglar Tools	Hillsborough	Criminal	Reversed
J. D. Butler	Forgery	Dixie	Circuit	Affirmed
Willard Campbell	Habeas Corpus	Dade	Circuit	Dismissed
Neoma Cahn	Robbery	Hillsborough	Criminal	Remanded
James Clark	Robbery	Dade	Criminal	Reversed
LeRoy Crawford	Murder 2nd Degree	Volusia	Circuit	Affirmed
W. A. Cromwell	Habeas Corpus	St. Lucie	Circuit	Affirmed
Angelo D'Allesandro	Habeas Corpus	Lee	Circuit	Affirmed
Jack Dees	Grand Larceny	Duval	Criminal	Dismissed
Frederick G. Deiterle	Murder 2nd Degree	Dade	Circuit	Reversed
Frank Dixon		Dade	Criminal	Dismissed
J. L. Dowling	Passing Worthless Check	Baker	Circuit	Remanded
Paul M. Drawdy	Perjury	Orange	Circuit	Reversed

D. F. Dunkle	Embezzlement	Palm Beach	Criminal	Reversed
Kermit Helms		Walton	Circuit	Dismissed
Theodore Johnson	Grand Larceny	Pinellas	Circuit	Affirmed
Sue D. Kauz	Arson	Dade	Criminal	Reversed
J. B. Keith	Murder 2nd Degree	Jackson	Circuit	Affirmed
Dave Kittrell		Escambia	Ct. Rec.	Dismissed
Arden Kuhn	Robbery	Hillsborough	Criminal	Dismissed
Naomi Kuhn	Robbery	Hillsborough	Criminal	Reversed
Forest Lake	False Entries	Seminole	Circuit	Reversed
Forest Lake	Embezzlement	Seminole	Circuit	Reversed
Forest Lake	Misappropriation	Seminole	Circuit	Reversed
Forest Lake	Converting Funds, etc.	Seminole	Circuit	Reversed
Wesley Lassiter	Manslaughter	Walton	Circuit	Affirmed
Bennie Maniscalco	Carnal Intercourse	Hillsborough	Criminal	Quashed
Clarence Metcalf	Rec. Stolen Property	Santa Rosa	Circuit	Affirmed
C. K. Morganstern	Rec. Stolen Property	Pinellas	Circuit	Affirmed
W. F. Morris	Manslaughter	Palm Beach	Criminal	Affirmed
Ernest Murray	Murder 1st Degree	LaFayette	Circuit	Affirmed
C. B. Palmer	Habeas Corpus	Leon	Circuit	Petr. Dischg
James Parrish	Breaking and Entering	Calhoun	Circuit	Reversed
Carlton Patrick		Palm Beach	Criminal	Dismissed
Harold Rivers, et al.		Hillsborough	Criminal	Dismissed
O. D. Roden	Robbery	Manatee	Circuit	Affirmed
Marcus Sallas	Manslaughter	Duval	Criminal	Affirmed
Marion Seay	Withholding Support Minor	Jackson	Circuit	Affirmed
Carl Lamar Sewell	Embezzlement	Lee	Circuit	Affirmed
Harry Slocum	Murder 2nd Degree	Okeechobee	Circuit	Affirmed
Normal Small		Dade	Circuit	Dismissed
Harry Smith	Assault Intent to Rape	Dade	Criminal	Affirmed
L. F. Smith	Violation Liquor Law	Holmes	Circuit	Affirmed

Name of Offender	Offense	County	Court	Disposition
T. Southworth	Murder 1st Degree	Palm Beach	Circuit	Affirmed
John Stevens (2 cases)	Manslaughter	Hillsborough	Criminal	Quashed
Fred Taylor	Murder 1st Degree	Dade	Circuit	Affirmed
Roy Tootle	Manslaughter	Hillsborough	Criminal	Quashed
William Troop	Murder 1st Degree	Duval	Circuit	Reversed
Alice Valdez & Wilbur Thompson	Manslaughter	Monroe	Criminal	Affirmed
Robert William	Arson	Escambia	Ct. Rec.	Dismissed
J. W. Williams		Okaloosa	Circuit	Dismissed
Mack Williams, et al.		Hillsborough	Criminal	Dismissed

CASES DISPOSED OF DURING JANUARY TERM, 1930.

Name of Offender	Offense	County	Court	Disposition
Ben Andrews	Manslaughter	Duval	Criminal	Affirmed
W. A. Andrews		Holmes	Circuit	Dismissed
Murrell Byrd		Baker	Circuit	Dismissed
Talton A. Branch	Disbarment	Hillsborough	Circuit	Reversed
H. J. Branson		Dade	Criminal	Dismissed
Horace Brooke	Desertion	Volusia	Circuit	Reversed
Dewey Broxson	Rec. Stolen Property	Santa Rosa	Circuit	Affirmed
P. L. Bucey		Hillsborough	Criminal	Dismissed
Robert A. Burke	Manslaughter	Okeechobee	Circuit	Affirmed
W. B. Cahoon	Habeas Corpus	Duval	Circuit	Ap. U. S. S. C.

Albert Campbell	Burglary	Santa Rosa	Circuit	Affirmed
Ray Clark	Murder 2nd Degree	Lee	Circuit	Dismissed
Dave Cobb	Aggravated Assault	Collier	Circuit	Reversed
Thos. Inman Cole		Dade	Criminal	Dismissed
Reuben Commander		Walton	Circuit	Dismissed
A. A. Crosby	Habeas Corpus	Charlotte	Circuit	Remanded
Mark Davidson	Murder	Alachua	Circuit	Affirmed
Marvin Dees, et al.	Breaking and Entering	LaFayette	Circuit	Affirmed
William DeLaney	Fugitive from Justice	Palm Beach	Circuit	Reversed
Dan Delk	Robbery Armed	Dade	Criminal	Affirmed
Barbara Dell	Habeas Corpus	Dade	Circuit	Affirmed
J. D. Edge	Robbery Armed	Suwannee	Circuit	Affirmed
Chris Fagg	Habeas Corpus	Palm Beach	Circuit	Discharged
Rollin Ferguson	Manslaughter	Dade	Circuit	Affirmed
B. Fowler		Walton	Circuit	Dismissed
W. L. Fox	Violation Chap. 7486	Polk	Circuit	Affirmed
J. K. Fuller, et al.	Habeas Corpus	Orange	Circuit	Affirmed
Bernard Gould	Disbarment	Dade	Circuit	Reversed
Rupert M. Graham	Manslaughter	Charlotte	Circuit	Affirmed
Nathan Grebstein	Habeas Corpus	Dade	Circuit	Discharged
John Hammock	Larceny	LaFayette	Circuit	Affirmed
John Harrison	Perjury	Walton	Circuit	Affirmed
Guss Harriss	Murder 2nd Degree	Marion	Circuit	Affirmed
J. M. Hudson	Aggravated Assault	Pasco	Circuit	Affirmed
Frank D. Hyde, et al.	Habeas Corpus	Dade	Circuit	Affirmed
Joe Italiano	Gambling	Hillsborough	Criminal	Reversed
Aaron Jerry	Aggravated Assault	Columbia	Circuit	Affirmed
Jelks Jones	Murder 2nd Degree	Dade	Criminal	Affirmed
James Kelly	Murder 2nd Degree	Escambia	Circuit	Reversed

Name of Offender	Offense	County	Court	Disposition
John Kirtsinger	Breaking, Entering	Pinellas	Circuit	Affirmed
T. R. Lee	Forgery	LaFayette	Circuit	Affirmed
Latt Maxcy	Violation Chap. 7468	Polk	Circuit	Reversed
John Metrie	Murder 2nd Degree	Dade	Circuit	Reversed
C. R. Murray	Larceny	LaFayette	Circuit	Reversed
Monty Myers	Manslaughter	Broward	Circuit	Affirmed
Madaline Nelson	Robbery Armed	Hillsborough	Criminal	Affirmed
Willie Nowling	Manslaughter	Walton	Circuit	Affirmed
Leon Oliver	Murder 2nd Degree	Dade	Circuit	Affirmed
Leroy Orme		Lee	Circuit	Dismissed
W. J. Peacock	Murder 2nd Degree	Calhoun	Circuit	Affirmed
Peter Pearson	Murder 1st Degree	Dade	Circuit	Affirmed
George M. Quigley	Habeas Corpus	Escambia	Circuit	Reversed
Willie Reeves	Murder 2nd Degree	Dade	Circuit	Affirmed
Berta Robertson	Manslaughter	Washington	Circuit	Affirmed
Paul Rodriguez	Concealment Personal Property	Hillsborough	Criminal	Remanded
Ed Scovill	Murder 2nd Degree	Palm Beach	Circuit	Affirmed
Mamie Sheffield	Murder 2nd Degree	Volusia	Circuit	Affirmed
Fred Simmons	Manslaughter	Dixie	Circuit	Affirmed
Howard Skiles	Misappropriation	Volusia	Circuit	Affirmed
Mrs. F. K. Smith	Habeas Corpus	Seminole	Circuit	Discharged
E. S. Smith	Habeas Corpus	Duval	Circuit	Reversed
J. Frank Taylor	Habeas Corpus	Escambia	Circuit	Discharged
Albert Thompson	Grand Larceny	Santa Rosa	Circuit	Affirmed
Will Tindall	Perjury	Hendry	Circuit	Affirmed
C. Turner, et al.	Breaking, Entering	Dade	Criminal	Affirmed

B. G. Waldrop	Criminal Trespass	Gulf	Circuit	Affirmed
Frank E. Welles	Habeas Corpus	Escambia	Circuit	Discharged
J. S. West	Murder 2nd Degree	Taylor	Circuit	Affirmed
Glenn Williams, et al.		Escambia	Ct. Rec.	Dismissed
Charlie W. Wright		Dixie	Circuit	Dismissed
John Abrocrombie	Larceny	Jackson	Circuit	Affirmed
Jimmie Anderson, et al.	Rec. Stolen Goods	Hillsborough	Criminal ..	Affirmed
Ben Andrews	Manslaughter	Duval	Criminal ..	Reversed
Ernest Atkins, et al.	Murder 1st Degree	Calhoun	Circuit	Reversed
Lee Bliss	Habeas Corpus	Palm Beach	Criminal ..	Petr. R'm'n'd
Leslie L. Britt	Resisting Arrest	Manatee	Circuit	Affirmed
Lewlie L. Britt	Manslaughter	Manatee	Circuit	Affirmed
Dewey Broxson	Rec. Stolen Property	Santa Rosa	Circuit	Pet. Denied
H. W. Buchanan	Habeas Corpus	Union	Circuit	Petr. R'm'n'd
Carl C. Bruton	Bigamy	Seminole	Circuit	Reversed
Harry Bryan	Larceny	Polk	Criminal ..	Affirmed
J. E. Dixon	Embezzlement	Duval	Criminal ..	Dismissed
Nelson Dobbs	Habeas Corpus	Dade	Circuit	Reversed
Harry Edwards, et al.		Hillsborough	Criminal ..	Dismissed
J. H. Ellis	Certiorari	Hillsborough	Ct. Crimes ..	Quashed
J. W. Ellison	Bigamy	Orange	Criminal ..	Affirmed
D. Y. Filer	Embezzlement	Monroe	Criminal ..	Dismissed
Rufus Finlayson		Dade	Criminal ..	Dismissed
David Floyd	Breaking and Entering	Escambia	Ct. Rec.	Affirmed
Charles J. Freed	Keeping Gambling House	Dade	Criminal ..	Affirmed
Geneva Gainer	Manslaughter	Jackson	Circuit	Affirmed
Ralph Gorrell	Assault with Intent Rape	Columbia	Circuit	Affirmed
Joe Haworth	Habeas Corpus	Orange	Circuit	Affirmed
Joe Haworth	Defrauding	Orange	Criminal ..	Affirmed
Delma Hays	Manslaughter	Hendry	Circuit	Affirmed

Name of Offender	Offense	County	Court	Dismissed
J. C. Houston	Manslaughter	Jackson	Circuit	Dismissed
Steve Jackson		Volusia	Circuit	Dismissed
A. E. Jones	Habeas Corpus	Volusia	Circuit	Affirmed
J. A. Johnson, et al.	Certiorari	Collier	Circuit	Pet. Denied
Jess King	Violation Prohibition Law	Okaloosa	Circuit	Affirmed
J. H. Kingry	Larceny	Jackson	Circuit	Affirmed
Paul C. Kline	Assault to Murder	Volusia	Circuit	Affirmed
Elliott Knight	Larceny	Duval	Criminal	Affirmed
Forest Lake	Making False Entries	Seminole	Circuit	Affirmed
Forest Lake	Embezzlement	Seminole	Circuit	Rev new trial
Forest Lake	Misapplication of Money	Seminole	Circuit	Reversed
Forest Lake	Converting Funds, etc.	Seminole	Circuit	Reversed
Forest Lake	Making False Entries	Seminole	Circuit	Reaffirmed
Elnora Lee	Forfeiting Auto	Broward	Circuit	Affirmed
Floyd Martin	Highway Robbery	Palm Beach	Criminal	Affirmed
Willie Martin	Murder 2nd Degree	Hillsborough	Circuit	Affirmed
Stanford Morris	Murder 3rd Degree	Dade	Circuit	Reversed
Clyde Morris	Murder 2nd Degree	Dade	Circuit	Affirmed
J. L. Montgomery	Cattle Stealing	Lee	Circuit	Affirmed
A. Montiel & J. Lopez		Hillsborough	Criminal	Dismissed
William McKenney	Murder 2nd Degree	Dade	Circuit	Affirmed
James McLaughlin	Habeas Corpus	Orange	Circuit	Affirmed
James McLaughlin	Defrauding	Orange	Criminal	Affirmed
John Nicholas		Escambia	Ct. Rec.	Dismissed
Ed Pierce	Manslaughter	Escambia	Ct. Rec.	Affirmed
Ivy Reynolds	Rec. Stolen Goods	Polk	Criminal	Affirmed

Frank Reynolds		Polk	Criminal ..	Dismissed
W. G. Richardson	Manslaughter	Alachua	Circuit	Affirmed
Enslow Sawyer, et al.	Arson	Monroe	Criminal ..	Reversed
H. R. Smith	Habeas Corpus	Marion	Circuit	Reversed
M. Steinberg	Larceny	Polk	Criminal ..	Reversed
Lee Stone		Columbia	Circuit	Dismissed
Johnnie Taylor		Hillsborough	Criminal ..	Dismissed
Park Tucker, et al.	Larceny	Sumter	Circuit	Affirmed
James Turner	False Arrest and Robbery	Hillsborough	Criminal ..	Reversed
John W. Turner	Manslaughter	Polk	Criminal ..	Dismissed
Roy Tootles	Manslaughter	Hillsborough	Criminal ..	Writ Quash'd
Roy Tootle	Carnal Intercourse	Hillsborough	Criminal ..	Affirmed
Jim Walker	Larceny	Polk	Criminal ..	Affirmed
Willie Ward	Manslaughter	Duval	Criminal ..	Affirmed
George E. Warren	Habeas Corpus	Dade	Circuit	Affirmed
W. L. White	Grand Embezzlement	Duval	Circuit	Dismissed
Amon White	Murder 1st Degree	Flagler	Circuit	Reversed
E. J. Williams	Arson	Polk	Criminal ..	Reversed
F. C. Williams		Hillsborough	Criminal ..	Dismissed
Minnie Williams	Murder 1st Degree	Polk	Circuit	Reversed

XI.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Escambia County, First Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Tried	Verdicts of Not Guilty Returned
Homicide:				
First Degree	3	1	4	0
Second Degree				
Third Degree				
Manslaughter				
Mayhem				
Rape	1		1	1
Robbery:				
Armed				
Unarmed				
False Imprisonment and Kid- napping				
Assaults:				
With intent to Commit Felony				
Other Assaults				
Libel and Defamation				
Sending Threatening Com- munications				
Arson and Kindred Offenses				
Burglary and Kindred Offenses				
Larceny:				
Of Automobiles				
Of Cattle				
Kindred Offenses				
Embezzlement:				
Public Officers				
Public Institutions				
Other Kinds				
False Pretenses and Kindred Offenses				
Forgery, Counterfeiting and Kindred Offenses				
Trespasses, Injuring Buildings, etc.				
Offenses Against Public Revenue				
Perjury				
Bribery				
Misconduct by Officers				

Resisting Arrest, etc.	
Conspiracy	
Adultery, Fornication, etc.	
Incest	
Bigamy	
Miscegenation	
Crime Against Nature	
Violation Liquor Law, Second Offense	
Desertion and Withholding Support from Wife and Children	
Miscellaneous Crimes Not Otherwise Enumerated: Special assignments exe- cuted in other circuits —15, requiring five months' absence from circuit	
Totals	4 1 5 1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court, none.		
Bond validation proceedings, 6; validated.		
Bond estreature proceedings, none.		
Criminal hearings attended, none.		
Habeas Corpus hearings attended, 2; remanded.		
Other cases not enumerated handled by enforcing tax liens for state, 2; collected 1 case other now on appeal.		

Respectfully submitted,

L. L. FABISINSKI,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Okaloosa County, First Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Tried	Verdicts of Not Guilty Returned
Homicide:				
First Degree	1	3	2	0
Second Degree				
Third Degree				
Manslaughter	1	1	2	1
Mayhem				
Rape	1		1	
Robbery:				
Armed	3			

Unarmed				
False Imprisonment and Kid-				
napping				
Assaults:				
With intent to Commit				
Felony	7	2	4	2
Other Assaults	4	1	1	0
Libel and Defamation		1		
Sending Threatening Com-				
munications				
Arson and Kindred Offenses....				
Burglary and Kindred Offenses	7	1	9	2
Larceny:				
Of Automobiles	2	2	2	0
Of Cattle	2	1	2	0
Kindred Offenses	7	6	3	2
Embezzlement:				
Public Officers	2			
Public Institutions		2		
Other Kinds	1	2		
False Pretenses and Kindred				
Offenses	1		1	1
Forgery, Counterfeiting and				
Kindred Offenses	1	1		
Trespasses, Injuring Buildings,				
etc.	2	2	3	1
Offenses Against Public Reve-				
nue				
Perjury				
Bribery				
Misconduct by Officers				
Resisting Arrest, etc.	3		2	0
Conspiracy				
Adultery, Fornication, etc.....	3	1		
Incest			1	0
Bigamy	2		2	0
Miscegenation				
Crime Against Nature	2		1	1
Violation Liquor Law, Second				
Offense				
Desertion and Withholding				
Support from Wife and				
Children	4	5	1	0
Miscellaneous Crimes Not Otherwise Enumerated:				
Circuit Court Misdemeanors....	6	5	8	5
Minor Misdemeanors Triable in				
Lower Court	20	19		
Totals	82	56	45	15

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit		
Bond Validation Proceedings	2	Validated
Bond Estreature Proceedings		
Criminal Hearings Attended		
Habeas Corpus Hearings Attended.....	1	Discharged
Other Cases Not Enumerated Handled		
by State Attorney	2	1 Pardon Revoked 1 Injunction Granted

Respectfully submitted,

L. L. FABISINSKI,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Governing Walton County, First Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Tried	Verdicts of Not Guilty Returned
Homicide:				
First Degree	7	2	3	1
Second Degree				
Third Degree				
Manslaughter	1			
Mayhem				
Rape	2	1		
Robbery:				
Armed	2	1	1	0
Unarmed				
False Imprisonment and Kidnapping				
Assaults:				
With intent to Commit				
Felony	15	9	14	3
Other Assaults	12	10	6	0
Libel and Defamation		2		
Sending Threatening Communi- cations	2			
Arson and Kindred Offenses	1	4	1	0
Burglary and Kindred Offenses	16	6	18	2
Larceny:				
Of Automobiles	13	1	6	2
Of Cattle	5	4	1	1
Kindred Offenses	9	8	4	0
Embezzlement:				
Public Officers		1		
Public Institutions				

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Other Kinds	3	2	2	0
False Pretenses and Kindred				
Offenses	4	1	1	0
Forgery, Counterfeiting and				
Kindred Offenses	5	3	1	0
Trespasses, Injuring Buildings,				
etc.	1	3		
Offenses Against Public Revenue				
Perjury	3	2	2	1
Bribery				
Misconduct by Officers				
Resisting Arrest, etc.	2		1	0
Conspiracy				
Adultery, Fornication, etc.		1	1	1
Incest				
Bigamy				
Miscegenation				
Crime Against Nature	1		1	0
Violation Liquor Law, Second				
Offense	6	2	4	1
Desertion and Withholding Sup-				
port of Wife and				
Children	10	17	5	2
Miscellaneous Crimes Not Otherwise Enumerated:				
Circuit Court Misdemeanors	12	4	4	2
Minor Misdemeanors Triable				
in Lower Court	25	21		
Totals	156	105	76	16

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to		
Circuit Court	12	1 Rev.-11 Dismissed
Bond Validation Proceedings	1	Validated on appeal
Bond Estreature Proceedings	10	Judgments entered
Criminal Hearings Attended	3	
Habeas Corpus Hearings Attended...		
Other Cases Not Enumerated Han-		
dled by State Attorney	1	Pardon revoked

Respectfully submitted,

L. L. FABISINSKI,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Santa Rosa County, First Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Tried	Verdicts of Not Guilty Returned
Homicide:				
First Degree	3	1	3	1

Second Degree				
Third Degree				
Manslaughter				
Mayhem				
Rape	3	6	3	1
Robbery:				
Armed	1	2	1	0
Unarmed				
False Imprisonment and Kidnapping				
Assaults:				
With intent to Commit				
Felony	9	6	9	0
Other Assaults	2	3	4	1
Libel and Defamation				
Sending Treating Com- munications				
Arson and Kindred Offenses				
Burglary and Kindred Offenses 11		9	12	0
Larceny:				
Of Automobiles	3	0	2	0
Of Cattle	3	1		0
Kindred Offenses	9	6	6	0
Embezzlement:				
Public Officers	1		1	0
Public Institutions				
Other Kinds		2		
False Pretenses and Kindred Offenses	3	2	2	1
Forgery, Counterfeiting and Kindred Offenses	3		1	0
Trespasses, Injuring Buildings etc.	2		1	1
Offenses Against Public Revenue				
Perjury	1		2	0
Bribery				
Misconduct by Officers				
Resisting Arrest, etc.	2	1	2	0
Conspiracy				
Adultery, Fornication, etc.	2		1	0
Incest			1	1
Bigamy				
Miscegenation				
Crime Against Nature	1		1	0
Violation Liquor Law				
Second Offense	3	2	5	0
Desertion and Withholding Sup- port from Wife and Children	9	12	1	0
Miscellaneous Crimes Not Otherwise Enumerated:				

Circuit Court Misdemeanors....	6	10	4	1
Minor Misdemeanors Triable				
in Lower Courts	8	22		
Total	85	85	62	7

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to		
Circuit Court	8	1 Rev.-7 Dismissed
Bond Validation Proceedings		
Bond Estreature Proceedings	4	Judgment entered
Criminal Hearings Attended		
Habeas Corpus Hearings Attended ..		
Other Cases Not Enumerated Han-		
dled by State Attorney	4	Pardons revoked, etc.
Respectfully submitted,		
		L. L. FABISINSKI,
		State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Franklin County, Second Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	0	0
Second Degree			
Third Degree	1	0	0
Manslaughter	1	0	0
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed	2	0	0
False Imprisonment and Kid-			
napping			
Assaults:			
With intent to Commit Felony	8	0	2
Other Assaults			
Libel and Defamation			
Sending Threatening Communi-			
cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....	12	0	4
Larceny:			
Of Automobiles	1	0	1
Of Cattle	1	0	1
Kindred Offenses			

Embezzlement:

Public Officers

Public Institutions

Other Kinds 1 0 0

False Pretenses and Kindred

Offenses

Forgery, Counterfeiting and

Kindred Offenses

Trespasses, Injuring Buildings, etc.

Offenses Against Public Revenue ...

Perjury

Bribery

Misconduct by Officers

Resisting Arrest, etc.

Conspiracy

Adultery, Fornication, etc.

Incest

Bigamy

Miscegenation

Crime Against Nature

Violation Liquor Law, Second

Offense

Desertion and Withholding Sup-

port from Wife and

Children 3 0 2

Miscellaneous Crimes Not Other-
wise Enumerated:

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court.....		
Bond Validation Proceedings	1	Validated
Bond Estreature Proceedings		
Criminal Hearings Attended		
Habeas Corpus Hearings Attended		
Other Cases Not Enumerated Handled by State Attorney		

Respectfully submitted,

GEO. W. WALKER,
State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Liberty County, Second Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

Indictments	No Bills	Verdicts of
Returned by	Returned by	Not Guilty
Grand Jury	Grand Jury	Returned

Homicide:

First Degree

Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid-			
napping	1	0	0
Assaults:			
With intent to Commit Felony			
Other Assaults			
Libel and Defamation			
Sending Threatening Communi-			
cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses			
Larceny: (grand)	1	0	0
Of Automobiles			
Of Cattle			
Kindred Offenses			
Embezzlement:	0	1	0
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred			
Offenses			
Forgery, Counterfeiting and			
Kindred Offenses			
Injuring Buildings, etc.	2	1	0
Offenses Against Public Revenue			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.	0	3	0
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children	1	0	0
Miscellaneous Crimes Not Other-			
wise Enumerated:			

BIENNIAL REPORT OF THE ATTORNEY GENERAL

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Assault and Attempt to Rape	0	1	0
Assault with intent to murder	6	0	2
Removing property from County under lien without consent of holder of lien	0	1	0
Aggravated Assault	4	0	0
Unlawfully entering building with intent to commit misde- meanor	1	0	1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court.....	1	Convicted
Bond Validation Proceedings	1	Validated
Bond Estreature Proceedings		
Criminal Hearings Attended		
Habeas Corpus Hearings Attended		
Other Cases Not Enumerated Handled by State Attorney		

Respectfully submitted,

GEO. W. WALKER,
State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Leon County, Second Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	1	2
Second Degree			
Third Degree			
Manslaughter	2	2	0
Mayhem			
Rape	1	4	0
Robbery:			
Armed			
Unarmed	4	0	2
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony	9	6	2
Other Assaults	1	0	1
Libel and Defamation	6	0	6
Sending Threatening Communi- cations			
Arson and Kindred Offenses	0	1	0
Burglary and Kindred Offenses	19	5	6

Larceny:			
Of Automobiles	10	1	0
Of Cattle	2	0	0
Kindred Offenses	4	0	1
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred			
Offenses	2	1	1
Forgery, Counterfeiting and			
Kindred Offenses	1	0	0
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.	1	0	1
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense	1	2	1
Desertion and Withholding Sup-			
port from Wife and			
Children	3	1	1
Miscellaneous Crimes Not Other-			
wise Enumerated:			
Culpable negligence	3	0	0
Shooting into dwelling house	3	0	0
Removing property under lien	6	5	2
Unlawfully practicing medicine	1	0	0
Defaulting witness	3	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court.....	14	Dismissed, 8
Bond Validation Proceedings		
Bond Estreature Proceedings	5	Judgment, 3
Criminal Hearings Attended		
Habeas Corpus Hearings Attended		
Other Cases Not Enumerated Handled by		
State Attorney		

Respectfully submitted,
 GEO. W. WALKER,
 State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Wakulla County, Second Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	0	1
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape	1	0	1
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony	1	5	0
Other Assaults	1	1	0
Libel and Defamation			
Sending Threatening Communica- tions			
Arson and Kindred Offenses			
Burglary and Kindred Offenses	5	0	1
Larceny:			
Of Automobiles			
Of Cattle	1	0	0
Kindred Offenses	5	1	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Offenses	1	0	0
Forgery, Counterfeiting and Kindred Offenses	1	0	0
Trespasses, Injuring Buildings, etc. Offenses Against Public Revenue			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy	1	0	0
Miscegenation			

Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children			
Miscellaneous Crimes Not Other-			
wise Enumerated:			
Unlawfully receiving stolen			
property	2	1	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.
 Bond Validation Proceedings.
 Bond Estreature Proceedings.
 Criminal Hearings Attended.
 Habeas Corpus Hearings Attended.
 Other Cases Not Enumerated Handled by State Attorney.
 Respectfully submitted,
 GEO. W. WALKER,
 State Attorney.

REPORT OF STATE ATTORNEY

For Third Judicial Circuit.

Requested, but not received.

REPORT OF STATE ATTORNEY

For Fourth Judicial Circuit

Requested, but not received.

REPORT OF STATE ATTORNEY

For Fifth Judicial Circuit

Requested, but not received.

REPORT OF STATE ATTORNEY

For Sixth Judicial Circuit

Requested, but not received.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Volusia County, Seventh Judicial Circuit for Two Years,
 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree.....	10	5	2
Second Degree	1	0	1
Third Degree			
Manslaughter	2	5	1
Mayhem	0	1	0
Rape	0	2	0

Robbery:		
Armed	5	3
Unarmed	1	2
False Imprisonment and Kidnapping	0	2
Assaults:		
With intent to Commit Felony....	0	4
Other Assaults	19	8
Libel and Defamation	0	1
Sending Threatening Commu-		
nications	0	0
Arson and Kindred Offenses.....	3	1
Burglary and Kindred Offenses.....	16	2
Larceny:		
Of Automobiles	6	2
Of Cattle	0	0
Kindred Offenses	16	14
Embezzlement:		
Public Officers	0	0
Public Institutions	2	0
Other Kinds	8	3
False Pretenses and Kindred		
Offenses	2	3
Forgery, Counterfeiting and Kin-		
dred Offenses	12	2
Tresspasses, Injuring Buildings, etc	0	0
Offenses Against Public Revenue.....	0	0
Perjury	0	0
Bribery	0	0
Misconduct by Officers	0	0
Resisting Arrest, etc.....	2	1
Conspiracy	0	0
Adultery, Fornication, etc.....	0	4
Incest	0	0
Bigamy	0	0
Miscegenation	0	0
Crime Against Nature	0	1
Violation Liquor Law, Second		
Offense	0	4
Desertion and Withholding Sup-		
port from Wife and Chil-		
dren	13	12
Miscellaneous Crimes Not Other-		
wise Enumerated:		
Receiving Stolen Property, etc.....	0	3
Culpable Negligence	1	2
Operating Gambling Devices, etc.....	0	16
Shrimp Fishing Out of Season.....	0	6
Shooting Into Dwelling, etc.	2	1
Killing Animal of Another	1	4
Malicious Mischief	0	2

Concealing Property Held Under		
Conditional Sale Contract....1	0	0
Carrying Concealed Weapons, etc.... 2	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 19; 12 dismissed; 3 remanded; 4 affirmed.

Bond Validation Proceedings, 11; 8 closed; 1 rejected; 2 pending.

Bond Estreature Proceeding, 26; 14 dismissed; 10 executions; 2 stricken.

Criminal Hearings Attended, 14.

Habeas Corpus Hearings Attended, none.

Other Cases Not Enumerated Handled by State Attorney.

Respectfully submitted,

MURRAY SAMS,

State Attorney, (Or County Solicitor).

REPORT OF STATE'S ATTORNEY

For Eighth Judicial Circuit, Covering Gilchrist County, 1929-1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Breaking and Entering.....	2	0	0
Forgery and Uttering Forgery.....	3	2	0
Murder	2	1	0
Manslaughter	1 (Pending)	0	0
Embezzlement	5	1	1

Cases Considered on Appeal from County Judge's Court and

Justice of the Peace Court.....	2 Cases
Bond Validation Proceedings	4 Cases
Suits Instituted on Fine and Cost Bonds and Appearance Bonds.....	34 Cases
Judgment Entered on Fine and Cost Bonds.....	30 Cases
Suits on Bonds now pending.....	4 Cases
Preliminary Hearings Attended	2 Cases
Suits on Official Bonds of Defaulting County Officers instituted....	2 Cases

REPORT OF STATE'S ATTORNEY

For Eighth Judicial Circuit, Covering Levy County, 1929-1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Murder	6	2	0
Forgery and Uttering Forgery.....	4	0	0
Breaking and Entering	9	3	0
Selling Whiskey, Second Offense ..	1	0	1
Assault to Commit Murder	7	2	1
Larceny	6	2	0
Robbery	2	0	0

Rape	1	1	1
Desertion and Withholding Means			
of Support	1	2	1
Aggravated Assault	2	0	0
Unlawful Possession of Salt			
Water Fish	2	0	0
Shooting into Dwelling House	1	0	0
Cases Considered on Appeal from County Judge's Court and			
Justice of Peace Court to Circuit Court			17 Cases
Bond Validation Proceedings			5 Cases
Suits Instituted on Fine and Cost Bonds and Appearance Bonds			21 Cases
Judgment Entered on Fine and Cost Bonds			14 Cases
Suits on Bonds now Pending			7 Cases
Preliminary Hearings Attended			12 Cases

REPORT OF STATE'S ATTORNEY

For Eighth Judicial Circuit, Covering Alachua County, 1929-1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Murder	20	3	1
Forgery and Uttering Forgery	15	6	3
Breaking and Entering	55	17	2
Selling Whiskey (Second Offense) ..	8	5	6
Assault to Commit Murder	23	11	4
Larceny	27	9	2
Robbery	6	2	2
Rape	2	3	1
Desertion and Withholding Means			
of Support	9	11	3
Aggravated Assault	4	0	1
Embezzlement	7	1	2
Perjury	3	1	2
Arson	1	0	0
Malicious Destruction of Property ..	1	0	0
Incest	1	1	1
Criminal Trespass	2	0	0
Removal of Property Under Lien	3	0	0
Aiding Escape	1	0	0
Obtaining Property Under False			
Pretense	2	0	0
Shooting into Dwelling House	1	0	0
Manslaughter	2	0	0
Bigamy	1	0	0
Cases Considered on Appeal from County Judge's Court and			
Justice of Peace Court to Circuit Court			36 Cases
Bond Validation Proceedings			4 Cases
Suits Instituted on Fine and Cost Bonds and Appearance Bonds			11 Cases
Judgment entered on Bonds			10 Cases

Suits on Bonds Now Pending	1 Case
Preliminary Hearings Attended	27 Cases
Habeas Corpus Hearings Attended	15 Cases

REPORT OF STATE'S ATTORNEY FOR NINTH JUDICIAL CIRCUIT,
WASHINGTON COUNTY,

Covering Washington County for 1929-1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	0	1
Manslaughter	1	0	0
Rape	1	0	0
Assault with Intent to Commit a			
Felony	7	4	2
Other Assaults	2	2	0
Larceny:			
Automobiles	4	0	0
Of Cattle	4	1	1
Other Kinds	5	3	0
Embezzlement:			
Public Official	0	0	0
Other Kinds	2	1	0
False Pretenses	1	3	0
Forgery, Kindred Offenses	3	3	0
Tresspasses, etc.	0	3	0
Perjury	11	1	1
Resisting Arrest	0	1	0
Conspiracy	1	0	0
Adultery	0	2	0
Bigamy	1	0	0
Violation Liquor Law, Second Of-			
fense	13	2	1
Desertion and Withholding Support			
from Wife	8	7	0
Miscellaneous Crimes:			
Reckless Driving, Auto, etc.	2	3	0
Disposing of Property Under Lien..	2	6	0
Breaking and Entering	10	1	0
Altering Mark of Animal	0	1	0
Practicing Medicine Without a			
License, etc.	1	1	0
Violating Election Law	0	1	0
Injuring Public Building	0	1	0
Violation of Liquor Law, First Of-			
fense	3	3	0
Soliciting Insurance, Unlawfully....	1	0	0

Illicit Cranal Knowledge	1	0	1
Burning Woods	0	2	0.

OTHER CASES HANDLED BY STATE ATTORNEY

Appeals from Lower Court	1
Habeas Corpus Hearings Attended	2
Other Cases Not Enumerated Handled by State Attorney	4

Respectfully submitted,

L. D. McRAE,
State Attorney.

REPORT OF STATE'S ATTORNEY FOR NINTH JUDICIAL CIRCUIT,
HOLMES COUNTY, 1929-1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	3	0
Rape	1	2	0
Assaults:			
With Intent to Commit a			
Felony	7	10	0
Other Assaults	2	0	0
Arson and Kindred Offenses	1	1	0
Larceny:			
Of Cattle	2	3	2
Kindred Offenses	6	3	1
Embezzlement	0	1	0
Forgery	1	1	0
Perjury	0	1	0
Adultery, etc.	0	1	0
Incest	0	1	0
Bigamy	0	1	0
Violation Liquor Law, Second Of- fense	5	7	2
Desertion of Wife and Children	12	3	1
Miscellaneous Crimes:			
Illicit Carnal Intercourse	1	2	2
Wantonly and Maliciously Shooting an Animal	1	0	1
Removing Property Under Lien.....	3	2	0
Operating Auto While Under In- fluence of Liquor and Kindred Offenses	5	2	1
Violating Liquor Law, First Of- fense	2	5	0
Breaking and Entering	2	4	0
Shooting Into Dwelling House	1	0	0
Unlawful Exhibition of Deadly			

Weapon	0	1	0
Injuring Public Building	1	0	0

OTHER CASES HANDLED BY STATE ATTORNEY

Appeals From County Judges Court	12
Bond Validations	4

Respectfully submitted,

L. D. McRAE,
State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Polk County, Tenth (10th) Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	18	12	4
Second Degree	4	Transcribed to Criminal Court of Record	
Third Degree			
Manslaughter	2	Transcribed to Criminal Court of Record	
Mayhem			
Rape	2		2
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony			
Other Assaults			
Libel and Defamation			
Sending Threatening Communi- cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses			
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses			
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Of- fenses			

Forgery, Counterfeiting and Kindred Offenses		
Trespasses, Injuring Buildings, etc.		
Offenses Against Public Revenue....		
Perjury		
Bribery		
Misconduct by Officers		
Resisting Arrest, etc.		
Conspiracy		
Adultery, Fornication, etc.		
Incest		
Bigamy		
Miscegnation		
Crime Against Nature		
Violation Liquor Law, Second Offense		
Desertion and Withholding Support from Wife and Children		
Miscellaneous Crimes Not Otherwise Enumerated:		
Embezzlement Bank Officer	1	Transcribed to Criminal Court of Record
False Entry Bank Officer	1	Transcribed to Criminal Court of Record

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court		22
Bond Validation Proceedings		44
Bond Estreature Proceedings		41
Criminal Hearings Attended		
Habeas Corpus Hearings Attended		
Other Cases Not Enumerated Handled by State Attorney		6

Respectfully submitted,

L. A. BOSNELL, JR.,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY

Covering Dade County, Eleventh Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	29	6	2
Second Degree	3	0	
Third Degree			
Manslaughter	1	0	0

Mayhem			
Rape	4	3	0
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid-			
napping			
Assaults:			
With intent to Commit Felony			
Other Assaults Investigated, 32			
Libel and Defamation			
Sending Threatening Communi-			
cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses			
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses			
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Of-			
fenses			
Forgery, Counterfeiting and			
Kindred Offenses			
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue....			
Violation State Banking Laws	8	0	0
Bribery			
Misconduct by Officers (mal-			
practice	3	0	
Kidnapping	7	0	
Conspiracy	4		
Adultery, Fornication, etc.			
Operating gambling houses	2	0	
Drunkenness in public office	1	0	0
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second Of-			
fense			
Desertion and Withholding Sup-			
port from Wife and			
dren	1	0	
Miscellaneous Crimes Not Otherwise			
Enumerated:	(No indictments returned)		
Accidental deaths investigated			160
Cases referred to County Solicitor			50

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Deaths from natural causes	58
Suicides	47
Justifiable homicides	18

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 191 now pending.	
Bond Validation Proceedings	21
Bond Estreature Proceedings	67
Criminal Hearings Attended	141
Habeas Corpus Hearings Attended	60
Other Cases Not Enumerated Handled by State Attorney	
2 Injunction cases.	
3 Sanity hearings.	

Respectfully submitted,
 VERNON HAWTHORNE,
 State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Hendry County, Twelfth Judicial Circuit for Two Years,
 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	2	1
Second Degree	4		2
Third Degree			
Manslaughter			
Mayhem	1	1	
Rape			
Robbery:			
Armed	4		
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony			
Other Assaults	1		
Libel and Defamation			
Sending Threatening Communica- tions			
Arson and Kindred Offenses			
Burglary and Kindred Offenses	7		2
Larceny:			
Of Automobiles		1	
Of Cattle	2	3	
Kindred Offenses	2	1	
Embezzlement:			

Public Officers	1		
Public Institutions			
Other Kinds	1	1	
False Pretenses and Kindred Of- fenses		1	
Forgery, Counterfeiting and Kindred Offenses			
Trespasses, Injuring Buildings, etc. Offenses Against Public Revenue....			
Perjury	2	1	
Bribery			
Misconduct by Officers	1	6	1
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second Of- fense			
Desertion and Withholding Support from Wife and Children....			
Miscellaneous Crimes Not Otherwise Enumerated:			
Selling Liquor to Indian	1		
Inciting to Perjury	1		1

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court		7
Bond Validation Proceedings		1
Bond Estreature Proceedings		2
Criminal Hearings Attended		7
Habeas Corpus Hearings Attended		2
Other Cases Not Enumerated Handled by State Attorney		

Respectfully submitted,

GUY M. STRAYHORN,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Glades County, Twelfth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

Indictments	No Bills	Verdicts of
Returned by	Returned by	Not Guilty
Grand Jury	Grand Jury	Returned

Homicide:

First Degree		
Second Degree	3	1

Third Degree	
Manslaughter	1
Mayhem	
Rape	
Robbery:	
Armed	
Unarmed	
False Imprisonment and Kid-	
napping	
Assaults:	
With intent to Commit Felony 3	3
Other Assaults	1
Libel and Defamation	
Sending Threatening Communi-	
cations..	
Arson and Kindred Offenses	
Burglary and Kindred Offenses	5
Larceny:	
Of Automobiles	1
Of Cattle	3
Kindred Offenses	2
Embezzlement:	
Public Officers	1
Public Institutions	
Other Kinds	
False Pretenses and Kindred Of-	
fenses	
Forgery, Counterfeiting and	
Kindred Offenses	
Trespasses, Injuring Building,	
etc.	1
Offenses Against Public Revenue...	
Perjury	
Bribery	
Misconduct by Officers	1
Resisting Arrest, etc.	
Conspiracy	
Adultery, Fornication, etc.	1 2
Incest	
Bigamy	
Miscegenation	
Crime Against Nature	
Violation Liquor Law, Second Of-	
fense	
Desertion and Withholding Sup-	
port from Wife and	
Children	
Miscellaneous Crimes Not Otherwise	

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Enumerated:

Violation Fish Law 3

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to Circuit Court		5
Bond Validation Proceedings		1
Bond Estreature Proceedings		0
Criminal Hearings Attended		3
Habeas Corpus Hearing Attended		1
Other Cases Not Enumerated Handled by State Attorney		

Respectfully submitted,

GUY M. STRAYHORN,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Collier County, Twelfth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdict of Not Guilty Returned
Homicide:			
First Degree			
Second Degree			
Third Degree			
Manslaughter			1
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony 3		3	2
Other Assaults			
Libel and Defamation			
Sending Threatening Communica- tions			
Arson and Kindred Offenses			
Burglary and Kindred Offenses 2			1
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses			
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			

False Pretenses and Kindred Of- fenses	
Forgery, Counterfeiting and Kindred Offenses	
Trespasses, Injuring Buildings, etc. Offenses Against Public Revenue....	
Perjury	
Bribery	
Misconduct by Officers	
Resisting Arrest, etc.	
Conspiracy	
Adultery, Fornication, etc.	
Incest	
Bigamy	
Miscegnation	
Crime Against Nature	
Violation Liquor Law, Second Of- fense	1
Desertion and Withholding Support from Wife and Children....	
Miscellaneous Crimes Not Otherwise Enumerated:	
Violation Fish Law	4

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	5
Bond Validation Proceedings	1
Bond Estreature Proceedings	1
Criminal Hearings Attended	2
Habeas Corpus Hearings Attended	2
Other Cases Not Enumerated Handled by State Attorney.....	

Respectfully submitted,

GUY M. STRAYHORN,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Charlotte County, Twelfth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	0	0	0
Second Degree	3	0	1
Third Degree	0	0	0
Manslaughter	0	0	0
Mayhem	0	0	0
Rape	0	1	0
Robbery:			

Armed	1	0	0
Unarmed	0	1	0
False Imprisonment and Kidnapping	0	0	0
Assaults:			
With intent to Commit Felony	2	3	1
Other Assaults	1	1	0
Libel and Defamation	0	1	0
Sending Threatening Communications	0	0	0
Arson and Kindred Offenses.....	0	3	0
Burglary and Kindred Offenses.....	5	0	1
Larceny:			
Of Automobiles	1	2	0
Of Cattle	10	0	6
Kindred Offenses	1	3	0
Embezzlement:			
Public Officers	0	3	0
Public Institutions	0	0	0
Other Kinds	0	0	0
False Pretenses and Kindred Offenses	0	0	0
Forgery, Counterfeiting and Kindred Offenses	2	0	0
Trespasses, Injuring Buildings, etc.	0	0	0
Offenses Against Public Revenue....	0	0	0
Perjury	1	0	0
Bribery	0	0	0
Misconduct by Officers	0	0	0
Resisting Arrest, etc.	0	0	0
Conspiracy	0	0	0
Adultery, Fornication, etc.	0	0	0
Incest	1	0	1
Bigamy	0	0	0
Miscegenation	0	0	0
Crime Against Nature	0	0	0
Violation Liquor Law, Second Offense	0	1	0
Desertion and Withholding Support from Wife and Children....	0	2	0
Miscellaneous Crimes Not Otherwise Enumerated:			
Timber Stealing	5	1	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 3.
Bond Validation Proceedings, 2.
Bond Estreature Proceedings, 1.
Criminal Hearings Attended, 8.

Habeas Corpus Hearings Attended, 3.

Other Cases Not Enumerated Handled by State Attorney, none.

Respectfully, submitted,

GUY M. STRAYHORN,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Lee County, Twelfth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	2	0
Second Degree	5	0	3
Third Degree	0	0	0
Manslaughter	5	1	2
Mayhem	0	0	0
Rape	0	0	0
Robbery:			
Armed	0	0	0
Unarmed	0	0	0
False Imprisonment and Kid- napping	0	0	0
Assaults:			
With intent to Commit Felony	4	2	0
Other Assaults	6	1	0
Libel and Defamation	0	0	0
Sending Threatening Communications	0	0	0
Arson and Kindred Offenses	4	0	0
Burglary and Kindred Offenses.....	17	1	1
Larceny:			
Of Automobiles	4	0	0
Of Cattle	2	0	0
Kindred Offenses	6	3	0
Embezzlement:			
Public Officers	0	0	0
Public Institutions	14	0	2
Other Kinds	1	0	0
False Pretenses and Kindred Offenses	2	2	0
Forgery, Counterfeiting and Kindred Offenses	10	0	1
Trespasses, Injuring Buildings, etc.	0	0	0
Offenses Against Public Revenue....	0	0	0
Perjury	1	1	1
Bribery	0	0	0
Misconduct by Officers	0	2	0
Resisting Arrest, etc.	0	0	0

Conspiracy	0	0	0
Adultery, Fornication, etc.	13	0	3
Incest	0	0	0
Bigamy	0	1	0
Miscegenation	0	0	0
Crime Against Nature	0	1	0
Violation Liquor Law, Second Offense	2	2	2
Desertion and Withholding Support from Wife and Children....	8	1	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Abortion	0	1	0
Timber Stealing	10	5	0
Operating Gambling Device	0	2	0
Larceny of Dogs	3	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 12.

Bond Validation Proceedings, 6.

Bond Estreature Proceedings, 4.

Criminal Hearings Attended, 31.

Habeas Corpus Hearings Attended, 8.

Other Cases Not Enumerated Handled by State Attorney, 5.

Respectfully, submitted,

GUY M. STRAYHORN,

State Attorney.

REPORT OF STATE ATTORNEY

Covering Hillsborough County, Thirteenth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	24	7	1
Second Degree	2	Sent to Criminal Court of Record	
Third Degree	0	0	0
Manslaughter	2	Sent to Criminal Court of Record	
Mayhem	0	0	0
Rape	5	3	1
Robbery:			
Armed	0	0	0
Unarmed	0	0	0
False Imprisonment and Kidnapping	0	0	0
Assaults:			
With intent to Commit Felony	0	0	0
Other Assaults	0	0	0
Libel and Defamation	0	0	0

Sending Threatening Communications	0	0	0
Arson and Kindred Offenses	0	0	0
Burglary and Kindred Offenses.....	0	0	0
Larceny:			
Of Automobiles	0	0	0
Of Cattle	0	0	0
Kindred Offenses	0	0	0
Embezzlement:			
Public Officers	0	0	0
Public Institutions	0	0	0
Other Kinds	0	0	0
False Pretenses and Kindred Offenses	0	0	0
Forgery, Counterfeiting and Kindred Offenses	0	0	0
Trespasses, Injuring Buildings, etc.	0	0	0
Offenses Against Public Revenue.....	0	0	0
Perjury	0	0	0
Bribery	0	0	0
Misconduct by Officers	0	0	0
Resisting Arrest, etc.	0	0	0
Conspiracy	0	0	0
Adultery, Fornication, etc.	0	0	0
Incest	0	0	0
Bigamy	0	0	0
Miscegenation	0	0	0
Crime Against Nature	0	0	0
Violation Liquor Law, Second Offense	0	0	0
Desertion and Withholding Support from Wife and Children....	0	0	0
Miscellaneous Crimes Not Otherwise Enumerated:			
Violation of Election Laws; 29 Sent to Criminal Court of Record and Court of Crimes.			
Disbarment Proceedings; Four Disbarred, Two Pending.			
Bastardy Proceedings; Two cases handled.			
Restoration of Sanity; Eleven Cases handled.			

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 41; 32 finished.
 Bond Validation Proceedings, 16; 15 completed.
 Bond Estreature Proceedings, none.
 Criminal Hearings Attended, 43; 33 bound over.
 Habeas Corpus Hearings Attended, 54.
 Other Cases Not Enumerated Handled by State Attorney, none.

Respectfully, submitted,

CHARLES B. PARKHILL,
 State Attorney.

REPORT OF COUNTY SOLICITOR

Covering Hillsborough County, Criminal Court of Record for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Informations Filed	Verdicts of Not Guilty Returned
Homicide:		
First Degree	0	0
Second Degree	2	2
Third Degree	0	0
Manslaughter	4	2
Mayhem	0	0
Rape—Assault with intent Commit	5	1
Robbery:		
Armed	23	4
Attempt	10	3
False Imprisonment and Kidnapping	0	0
Assaults:		
With intent to Commit Felony	69	13
Other Assaults	95	9
Libel and Defamation	2	1
Sending Threatening Communications	0	0
Arson and Kindred Offenses	8	2
Burglary and Kindred Offenses	164	11
Larceny:		
Of Automobiles—Grand	221	19
Of Cattle—Petty	322	19
Kindred Offenses	37	9
Embezzlement:		
Public Officers	0	0
Public Institutions	0	0
Other Kinds	33	6
False Pretenses and Kindred Offenses	26	0
Forgery, Counterfeiting and Kindred Offenses	0	0
Trespasses, Injuring Buildings, etc.	15	0
Offenses Against Public Revenue	0	0
Perjury	3	0
Bribery	2	2
Misconduct by Officers	0	0
Resisting Arrest, etc.	4	0
Conspiracy	5	1
Adultery, Fornication, etc.	13	1
Incest	2	2
Bigamy	3	0
Miscegenation	0	0
Crime Against Nature	2	0
Violation Liquor Law, Second Offense	0	0
Desertion and Withholding Support from Wife and Children	46	3

Miscellaneous Crimes Not Otherwise Enumerated:

Traffic Violation—Drunk and Reckless

Driving	1219	8
Gambling, etc.	71	21
Forgery, Worthless Checks, etc.	97	3
Drunkenness, Offenses Against Peace.....	193	16
All Other Offenses	297	0
6 mo. Jan. to June, 1929 Felonies	162	25
Misdemeanors	242	20
Traffic	516	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.....
Bond Validation Proceedings
Bond Estreature Proceedings
Criminal Hearings Attended
Habeas Corpus Hearings Attended
Other Cases Not Enumerated Handled by State Attorney.....

This report does not include the large number of investigations made by this office in which no informations could be filed because of lack of evidence.

Respectfully, submitted,

W. M. SKINNER,

County Solicitor.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Jackson County, Fourteenth Judicial Circuit for Two Years, 1929-1930. Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	15	0	2
Second Degree	1	0	0
Third Degree	0	0	0
Manslaughter	0	2	0
Mayhem	0	0	0
Rape	4	0	1
Robbery:			
Armed	3	0	1
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony 9		4	0
Other Assaults	6	6	1
Libel and Defamation			
Sending Threatening Communications	1	0	0
Arson and Kindred Offenses	1	0	0

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Burglary and Kindred Offenses	18	3	3
Larceny:			
Of Automobiles	3	0	0
Of Cattle	8	1	1
Kindred Offenses	16	9	1
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	3	0	0
False Pretenses and Kindred			
Offenses	3	4	1
Forgery, Counterfeiting and			
Kindred Offenses	15	1	3
Trespasses, Injuring Buildings, etc.	1	1	1
Offenses Against Public Revenue	0	0	0
Perjury	19	0	0
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy	0	2	0
Miscegenation	0	0	0
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Support			
from Wife and Children	23	12	0
Miscellaneous Crimes Not			
Otherwise Enumerated:			
Disposing Property under Lien	3	11	0
Possession of Liquor	4	0	0
Gambling Devices	3	1	0
Breaking Jail	1	0	0
Intercourse with Person 18	4	6	0
Aiding Escape	2	0	0
Reckless Driving	1	1	0
Preparing Physicians Pres.	2	0	0
Failure to Register Drug Store	1	0	0
Lewd Behavior	1	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 11.
 Bond Validation Proceedings, unknown.
 Bond Estreature Proceedings.
 Criminal Hearings Attended, unknown.
 Habeas Corpus Hearings Attended, unknown.

Other Cases Not Enumerated Handled by State Attorney.

Respectfully, submitted,

JOHN H. CARTER, JR.

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Calhoun County, Fourteenth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	2	0
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed	0	1	0
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony	3	3	1
Other Assaults	6	3	1
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses	0	1	0
Burglary and Kindred Offenses.....	8	0	1
Larceny:			
Of Automobiles	1	1	0
Of Cattle	1	1	0
Kindred Offenses	1	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Offenses	2	1	0
Forgery, Counterfeiting and Kindred Offenses	2	0	0
Trespasses, Injuring Buildings, etc.	0	0	0
Offenses Against Public Revenue...	0	0	0
Perjury	1	0	0
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy	0	1	0
Adultery, Fornication, etc.			

Incest	0	1	0
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second Offense	1	0	0
Desertion and Withholding Support from Wife and Children....	6	1	0
Miscellaneous Crimes Not Otherwise Enumerated:			
Disposing of Mortgaged Property	1	2	0
Altering Animal Mark	2	0	0
Shooting into Vehicle	2	0	0
Carrying Concealed Weapon....	1	0	0
Intercourse with Person 18	3	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 3.

Bond Validation Proceedings, unknown.

Bond Estreature Proceedings.

Criminal Hearings Attended, unknown.

Habeas Corpus Hearings Attended, unknown.

Other Cases Not Enumerated Handled by State Attorney.

Respectfully, submitted,

JOHN H. CARTER, JR.,

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Gulf County, Fourteenth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	4	0
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony	3	0	0
Other Assaults	1	0	0
Libel and Defamation			

Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....			
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses	1	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	0	1	0
False Pretenses and Kindred			
Offenses	0	1	0
Forgery, Counterfeiting and			
Offenses			
Trespasses, Injuring Buildings, etc. 1		0	0
Offenses Against Public Revenue			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law,			
Second Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children			
Miscellaneous Crimes Not			
Otherwise Enumerated:			
Reckless Driving	1	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to		
Circuit Court	1	0
Bond Validation Proceedings		
Bond Estreature Proceedings		
Criminal Hearings Attended	Unknown	
Habeas Corpus Hearings Attended	Unknown	
Other Cases Not Enumerated Handled		
by State Attorney		

Respectfully, Submitted,

JOHN H. CARTER, JR.

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Palm Beach County, Fifteenth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	19	2	1
Second Degree	3	0	1
Third Degree			
Manslaughter			
Mayhem	0	0	0
Rape	0	1	0
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony			
Other Assaults			
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses ...			
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses			
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Offenses			
Forgery, Counterfeiting and Kindred Offenses			
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue...			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			

Miscegenation			
Crime Against Nature			
Violation Liquor Law,			
Second Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children			
Miscellaneous Crimes Not			
Otherwise Enumerated:			
Operating Gambling House	1	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Dispositions
Appeals from Lower Court to		
Circuit Court		
Bond Validation Proceedings	0	
Bond Estreature Proceedings	9	Judgments
Criminal Hearings Attended	18	
Habeas Corpus Hearings Attended	5	
Other Cases Not Enumerated Handled		
by State Attorney		

As you know, there is a Criminal Court of Record in this County which handles all cases except capital.

We have a special act applying to this County providing for four terms of Circuit Court each year, in January, March, June and October.

The Grand Jury makes a great deal of investigation into matters of a public nature and interest in which no indictments are returned, but many recommendations of benefit to the County and State are set in action by them.

Respectfully, submitted,

L. R. BAKER,
State Attorney.

REPORTS OF STATE'S ATTORNEYS FOR SIXTEENTH JUDICIAL CIRCUIT, COVERING LAKE COUNTY, 1929-1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Murder	15	1	4
Forgery and Uttering Forgery	12	0	0
Breaking and Entering	13	7	3
Selling Whiskey (Second Offense) ..	2	1	0
Assault to Commit Murder	18	10	1
Larceny	14	7	2
Robbery	0	1	1
Receiving Stolen Property	4	0	0
Rape	0	1	0
Operating Motor Vehicle While			
Intoxicated	1	0	0

Desertion and Withholding Means			
of Support	15	3	0
Aggravated Assault	0	2	0
Enticing Female for Immoral			
Purpose	2	0	0
Embezzlement	7	2	0
Hit and Run Driver	1	0	0
Throwing Down Fence	1	0	0
Arson	0	1	0
Unlawful Carnal Intercourse	2	0	0
Lewd Lascivious Cohabitation	3	0	0
Removal of Property Under Lien	8	2	1
Selling Mortgaged Property Under			
Conditional Sale Contract	1	0	0
Obtaining Property Under False			
Pretenses	1	0	0
Obstructing an Officer	1	0	0
Manslaughter	2	1	0
Total	123	39	12
Cases considered on Appeal from			
County Judge's Court and			
Justice of the Peace Court			
to Circuit Court	7		
Bond Validation Proceedings	17		
Habeas Corpus	6		
Suit on Bonds	9		

Very respectfully,

J. W. HUNTER,
State Attorney.

REPORT OF STATE'S ATTORNEYS FOR SIXTEENTH JUDICIAL
CIRCUIT, COVERING SUMTER COUNTY, 1929-1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Murder	4	1	0
Forgery and Uttering Forgery	5	1	0
Breaking and Entering	7	1	0
Selling Whiskey (Second Offense)	2	1	0
Assault to Commit Murder	1	5	0
Larceny	6	10	1
Robbery	1	1	1
Receiving Stolen Goods	2	3	0
Desertion and Withholding Means			
of Support	3	9	0
Aggravated Assault	1	1	0
Embezzlement	2	1	0
Exacting Reward by Public Officer	2	0	0

Arson	1	0	0
Malicious Destruction of Property....	1	0	0
Threatening to Accuse of Crime.....	2	0	0
Running Gambling House	1	0	0
Obtaining Property Under False Pretenses	2	2	0
Incest	0	3	0
Bastardy	0	2	0
	—	—	—
Total	43	41	2
Cases considered on Appeal from County Judge's Court and Justice of Peace Court to Circuit Court	2		
Bond Validation Proceedings	1		
Suits Instituted on Fine and Cost Bonds and Appearance Bonds	3		
Habeas Corpus	2		
Preliminary Hearings Attended	10		
	—		
Total			

Very respectfully,

J. W. HUNTER,
State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Orange County, Seventeenth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	9	1	0
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape	1	0	1
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony 1		0	0
Other Assaults			
Libel and Defamation			
Sending Threatening			

Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses			
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses			
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	1		
False Pretenses and Kindred			
Offenses	22		
Forgery, Counterfeiting and Kindred			
Offenses			
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue.....			
Perjury	1	0	0
Bribery	1	0	0
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy	3	0	0
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children			
Miscellaneous Crimes Not			
Otherwise Enumerated :			
Excessive Loans to Officers of			
Banks	28	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

	Number	Disposition
Appeals from Lower Court to		
Circuit Court	20	Affirmed 85%
Bond Validation Proceedings.....	4	
Bond Estreature Proceedings	10	
Criminal Hearings Attended	25	
Habeas Corpus Hearings Attended.....	40	
Other Cases Not Enumerated		
Handled by State Attorney		

Respectfully, submitted,

W. A. BOZER,
State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Osceola County, Seventeenth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	2	1
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed	1	0	0
Unarmed			
False Imprisonment and Kidnapping			
Assaults			
With intent to Commit Felony..	4	2	0
Other Assaults	1	0	0
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses	1	1	0
Burglary and Kindred Offenses.....			
Larceny:			
Of Automobiles	2	0	0
Of Cattle			
Kindred Offenses			
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	0	0	1
False Pretenses and Kindred Offenses			
Forgery, Counterfeiting and Kindred Offenses	2	0	0
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue....			
Perjury	1	0	0
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy	0	1	0
Miscegenation			

Crime Against Nature	1	1	0
Violation Liquor Law, Second Offense			
Desertion and Withholding Sup- port from Wife and Children	2	2	0
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering, etc.	9	6	0

OTHER CASES HANDLED BY STATE ATTORNEY

	Number	Disposition
Appeals from Lower Court to Circuit Court		
Bond Validation Proceedings		
Bond Estreature Proceedings		
Criminal Hearings Attended		
Habeas Corpus Hearings Attended		
Other Cases Not Enumerated Handled by State Attorney		

Respectfully, submitted,

W. A. BOZER,

State Attorney, (Or County Solicitor).

REPORT OF COUNTY SOLICITOR

Covering Criminal Court of Record for Orange County, for 2 years,
1929-1930 Under Section 132, Compiled General Laws.

	Informations filed by County Solicitor	Bonds Es- treated or Defendants Not Arrested or nolle prossed or released on Habeas Corpus	Plea of Verdict of Guilty	Verdict of Not Guilty Returned
Homicide, Second Degree	3	0	2	1
Manslaughter	6	0	4	2
Robbery	7	0	4	3
Kidnapping	1	1	0	0
Assault to Murder	30	5	19	6
Aggravated Assault	31	8	18	5
Assault and Battery	59	20	33	6
Libel and Defamation	2	0	1	1
Arson	8	5	1	2
Breaking and Entering and Entering without break- ing to commit a felony or misdemeanor	103	7	91	5
Larceny of Automobiles	11	3	6	2
Larceny of Cattle	5	0	5	0
Other grand larcenies	36	6	28	2

Petit Larceny	89	17	64	8
Receiving Stolen Goods	13	7	6	0
Common and Notorious Thief	2	0	2	0
Embezzlement	36	23	8	5
False Pretenses	23	13	10	0
Indictments returned by Grand Jury	22	22	0	0
Forgery and worthless Checks	128	26	98	3
Trespass	17	7	10	0
Malicious Injury to Personal Property	10	3	5	2
Perjury and Inciting to Commit Perjury	4	2	1	1
Bribery	4	2	2	0
Resisting Arrest or Obstructing Officer	17	4	10	3
Conspiracy	5	4	0	1
Adultery—fornication—lewd and lascivious cohabitation—carnal intercourse with female under eighteen years	61	14	42	5
Bigamy	9	3	6	0
Crime Against Nature	12	6	4	2
Selling Liquor	34	11	18	5
Possession of Liquor and Stills	198	32	151	15
Violation of Liquor Law, Second Offense	3	0	3	0
Desertion and withholding Support from Wife and Child	24	16	6	2
Concealed Weapons and unlawful Exhibition of Deadly Weapons	25	4	16	5
Obtaining Lodging With Intent to Defraud	6	2	4	0
Attempts to Commit Felony	8	2	5	1
Impersonating Officer	3	2	1	0
Aiding Escape	1	1	0	0
Disposing of Property Under Lien	8	3	2	3
Temporary Use of Personal Property	6	1	4	1
Culpable Negligence	3	3	0	0
Branding Cattle Fraudulently	1	0	0	1
Driving While Drunk and Reckless Driving	215	25	183	8
Drunk	157	15	136	6
Keeping House of ill-fame	2	2	0	0
Open Profanity	12	0	11	1
Vagrancy	6	2	3	1

Disturbing Religious Assembly	1	0	0	1
Unlawful Assembly	1	0	1	0
Business on Sunday	2	2	0	0
Injury to Children	1	0	1	0
Violation Fish and Game Law	15	3	11	1
Violation Sanitary Laws	8	1	7	0
Doing Business Without				
License	218	20	196	2
Traffic Violations	392	49	340	3
Violation Banking Laws, (Indictments returned by				
Grand Jury)	45	45	0	0
Gambling or Keeping Gambling Machines	19	2	16	1
	2168	452	1594	122

Number

Preliminary Hearings Attended30

Habeas Corpus Hearings Attended12

Respectfully submitted,

O. RAYMOND ELLARS,
County Solicitor.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Manatee County, 18th Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	0	1
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed	0	2	0
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit			
Felony	12	4	3
Other Assaults			
Libel and Defamation			
Sending Threatening Communications	0	1	0
Arson and Kindred Offenses	2	1	1

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Burglary and Kindred Offenses	22	10	5
Larceny:			
Of Automobiles	10	7	2
Of Cattle	7	0	4
Kindred Offenses	3	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	3	0	3
False Pretenses and Kindred			
Offenses	1	3	0
Forgery, Counterfeiting and			
Kindred Offenses	14	8	1
Trespasses, Injuring Building, etc.			
Offenses Against Public Revenue...			
Perjury	1	0	0
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.	1	0	0
Conspiracy			
Adultery, Fornication, etc.	0	1	0
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children	3	5	0
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Blackmail	1	0	0
Compounding a Felony	0	1	0
Obscene Literature	0	1	0
Removing Property Under Lien.....	1	0	0
Receiving Stolen Goods	1	5	1
Dynamiting	0	1	0
Maliciously Killing Hogs	1	1	0
—	—	—	—
	88	51	21

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	15
Bond Validation Proceedings	7
Bond Estreature Proceedings	19
Criminal Hearings Attended	11

Habeas Corpus Hearings Attended	13
Other Cases Not Enumerated Handled by State Attorney	9

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Respectfully submitted,

DEWEY A. DYER,
State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Manatee County, 18th Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	5	0	1
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed	0	2	0
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit			
Felony	12	4	3
Other Assaults			
Libel and Defamation			
Sending Threatening Communi- cations	0	1	0
Arson and Kindred Offenses	2	1	1
Burglary and Kindred Offenses.....	22	10	5
Larceny:			
Of Automobiles	10	7	2
Of Cattle	7	0	4
Kindred Offenses	5	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	3	0	3
False Pretenses and Kindred Offenses	1	3	0
Forgery, Counterfeiting and Kindred Offenses	14	8	1
Trespasses, Injuring Building, etc. Offenses Against Public Revenue....			
Perjury	1	0	0

Bribery			
Misconduct by Officers			
Resisting Arrest, etc.	1	0	0
Conspiracy			
Adultery, Fornication, etc.	0	1	0
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second Offense			
Desertion and Withholding Sup- port from Wife and Children	3	5	0
Miscellaneous Crimes Not Otherwise Enumerated:			
Blackmail	1	0	0
Compounding a Felony	0	1	0
Obscene Literature	0	1	0
Removing Property Under Lien.....	1	0	0
Receiving Stolen Goods	1	5	1
Dynamiting	0	1	0
Maliciously Killing Hogs	1	1	0
	88	51	21

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	15
Bond Validation Proceedings	7
Bond Estreature Proceedings	19
Criminal Hearings Attended	11
Habeas Corpus Hearings Attended	13
Other Cases Not Enumerated Handled by State Attorney	9
	74

Respectfully submitted,

DEWEY A. DYER,
State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Highlands County, Nineteenth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws. From June 1929 to December 31st, 1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	0	0
Second Degree			
Third Degree			

Manslaughter	0	1	0
Mayhem			
Rape	0	3	0
Robbery:			
Armed	3	0	0
Unarmed			
False Imprisonment and Kid-			
napping			
Assaults:			
With intent to Commit			
Felony	6	0	3
Other Assaults	6	0	0
Libel and Defamation	1	0	0
Sending Threatening Communi-			
cations			
Arson and Kindred Offenses	1	1	0
Burglary and Kindred Offenses.....	22	0	0
Larceny:			
Of Automobiles	3	1	0
Of Cattle			
Kindred Offenses	3	2	1
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	27	9	0
False Pretenses and Kindred			
Offenses			
Forgery, Counterfeiting and			
Kindred Offenses	1	0	0
Trespasses, Injuring Building, etc.			
Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.	1	0	0
Conspiracy			
Adultery, Fornication, etc.	1	0	1
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children	2	2	0
Miscellaneous Crimes Not Other-			
wise Enumerated:			
Forfeiture Proceedings	3	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	3
Bond Validation Proceedings	4
Bond Estreature Proceedings	
Criminal Hearings Attended	6
Habeas Corpus Hearings Attended	7
Other Cases Not Enumerated Handled by State Attorney	

Respectfully submitted,

L. GRADY BURTON,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Hardee County, Nineteenth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws. From June 1929 to December 31st, 1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	3	1
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit			
Felony	3	2	1
Other Assaults	1	3	0
Libel and Defamation			
Sending Threatening Communi- cations			
Arson and Kindred Offenses	0	2	0
Burglary and Kindred Offenses	17	2	0
Larceny:			
Of Automobiles	6	0	0
Of Cattle	5	1	4
Kindred Offenses	2	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	2	0	0
False Pretenses and Kindred Offenses	1	0	0

Forgery, Counterfeiting and

Kindred Offenses			
Trespasses, Injuring Buildings, etc. 0	1		0
Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc. 1	0		1
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second Offense			
Desertion and Withholding Sup- port from Wife and Children	1	3	0
Miscellaneous Crimes Not Other- wise Enumerated:			
Bank Failure Investigations 3 cases			
Investigation of Alleged Violation of Primary Election Laws			

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	6
Bond Validation Proceedings	4
Bond Estreature Proceedings	
Criminal Hearings Attended	17
Habeas Corpus Hearings Attended	9
Other Cases Not Enumerated	

Handled by State Attorney

Respectfully submitted,

L. GRADY BURTON,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering DeSoto County, Nineteenth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws. From June 1929 to
December 31st, 1930.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	3	0	1
Second Degree			
Third Degree			
Manslaughter	0	1	0
Mayhem	0	1	0

Rape			
Robbery:			
Armed	1	0	1
Unarmed			
False Imprisonment and Kid-			
napping			
Assaults:			
With intent to Commit Felony	3	0	0
Other Assaults	3	0	0
Libel and Defamation			
Sending Threatening Communi-			
cations			
Arson and Kindred Offenses	1	0	1
Burglary and Kindred Offenses.....	2	0	0
Larceny:			
Of Automobiles	3	0	0
Of Cattle	0	0	1
Kindred Offenses	2	2	1
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred			
Offenses			
Forgery, Counterfeiting and			
Kindred Offenses	8	2	0
Trespasses, Injuring Buildings, etc.	2	1	0
Offenses Against Public Revenue....			
Perjury	0	1	0
Bribery	0	1	0
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children	0	1	0
Miscellaneous Crimes Not Other-			
wise Enumerated:			

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	23
Bond Validation Proceedings	
Bond Estreature Proceedings	

Criminal Hearings Attended	7
Habeas Corpus Hearings Attended	4
Other Cases Not Enumerated Handled by State Attorney	

Respectfully submitted,

L. GRADY BURTON,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Monroe County, Twentieth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	2	0
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony			
Other Assaults			
Libel and Defamation			
Sending Threatening Communi- cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....			
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses			
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Offenses			
Forgery, Counterfeiting and Kindred Offenses			
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue			
Perjury			
Bribery			

Misconduct by Officers	
Resisting Arrest, etc.	
Conspiracy	
Adultery, Fornication, etc.	
Incest	
Bigamy	
Miscegnation	
Crime Against Nature	
Violation Liquor Law, Second Offense	
Desertion and Withholding Sup- port from Wife and Children	
Miscellaneous Crimes Not Other- wise Enumerated:	

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.....	
Bond Validation Proceedings	
Bond Estreature Proceedings	
Criminal Hearings Attended	
Habeas Corpus Hearings Attended	3
Other Cases Not Enumerated Handled by State Attorney	3

Respectfully submitted,

GEO. G. BROOKS, JR.,

State Attorney, (Or County Solicitor.

REPORT OF COUNTY SOLICITOR, CRIMINAL COURT OF RECORD

Covering Monroe County, Florida, for Two Years, 1929-1930, Under
Section 132, Compiled General Laws.

	Informations Filed by Solicitor	Verdicts of Not Guilty Returned
Homicide:		
First Degree		
Second Degree	1	0
Third Degree	0	0
Manslaughter	1	1
Mayhem	0	0
Rape—Statutory	1	0
Robbery:		
Armed	3	3
Unarmed	0	0
False Imprisonment and Kidnapping	0	0
Assaults:		
With intent to Commit Felony	9	4
Other Assaults	11	4
Libel and Defamation	1	1
Sending Threatening Communications	0	0
Arson and Kindred Offenses	2	0

Burglary and Kindred Offenses:

Breaking and Entering	17	5
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Larceny:

Of Automobiles	0	0
Of Cattle	0	0
Kindred Offenses (Petit and Grand)	10	1

Embezzlement:

Public Officers	1	0
Public Institutions	0	0
Other Kinds	4	2

False Pretenses and Kindred Offenses	1	0
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Forgery, Counterfeiting and Kindred Offenses...	0	0
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Trespasses, Injuring Buildings, etc.	1	0
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Offenses Against Public Revenue	0	0
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Doing Business Without License	5	1
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Perjury	0	0
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Bribery	0	0
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Misconduct by Officers	0	0
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Resisting Arrest, etc.	2	2
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Conspiracy	0	0
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Adultery, Fornication, etc.	0	0
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Incest	0	0
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Bigamy	0	0
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Miscegenation	0	0
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Crime Against Nature	2	1
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Violation Liquor Law, First Offense	32	4
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Desertion and Withholding Support from

Wife and Children	8	2
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Miscellaneous Crimes Not Otherwise Enumerated:

Vagrancy	7	1
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Gambling	16	2
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Reckless Driving	6	0
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Drunkenness	7	0
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Carrying Concealed Weapons	4	1
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Beating Way on Train	1	0
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Indecent Exposure of Person	1	0
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Passing Worthless Checks	2	0
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Violation of Pharmacy Laws	9	9
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Malicious Mischief	1	0
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Enticing Unmarried Female for Purpose of		
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Prostitution	1	0
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OTHER CASES HANDLED BY STATE ATTORNEYS

Violation of Sponge Fishing Laws	22	8
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Taking Game Birds Out of Season	1	0
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Respectfully, submitted,

J. F. BUSTO,

County Solicitor, Monroe County.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Indian River County, Twenty-first Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	1	0
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape	0	2	0
Robbery:			
- Armed	1	1	0
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony	3	1	0
Other Assaults			
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....	2	1	1
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses	3	3	1
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	0	2	0
False Pretenses and Kindred Offenses	0	1	0
Forgery, Counterfeiting and Kindred Offenses	2	1	0
Trespasses, Injuring Buildings, etc.	1	0	0
Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy	1	0	0
Adultery, Fornication, etc.	0	3	0
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			

Violation Liquor Law, Second			
Offense	2	0	0
Desertion and Withholding Support			
from Wife and Children....	0	2	0
Miscellaneous Crimes Not			
Otherwise Enumerated:			

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.
 Bond Validation Proceedings, 6; 1 reversed.
 Bond Estreature Proceedings.
 Criminal Hearings Attended, 10.
 Habeas Corpus Hearings Attended, 2; remanded.
 Other Cases Not Enumerated Handled by State Attorney, 2.
 Respectfully, submitted,
 ANGUS LUMNER,
 State Attorney.

REPORT OF STATE ATTORNEY

Covering Martin County, Twenty-first Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1	2	0
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed	0	1	0
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony 2		0	0
Other Assaults			
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....	10	1	2
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses	7	3	0
Embezzlement:			
Public Officers			

Public Institutions			
Other Kinds	2	2	0
False Pretenses and Kindred			
Offenses	0	1	0
Forgery, Counterfeiting and			
Kindred Offenses	4	1	0
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy	1	0	0
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Support			
from Wife and Children....			
Miscellaneous Crimes Not			
Otherwise Enumerated:			
Keeping Gambling House	0	2	0
Shooting into House	1	0	1
Banking Laws	7	0	2

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.

Bond Validation Proceedings, 3; validated.

Bond Estreature Proceedings.

Criminal Hearings Attended, 15.

Habeas Corpus Hearings Attended, 4; 2 remanded.

Other Cases Not Enumerated Handled by State Attorney.

Respectfully, submitted,

ANGUS SUMNER,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering St. Lucie County, Twenty-first Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

Indictments	No Bills	Verdicts of
Returned by	Returned by	Not Guilty
Grand Jury	Grand Jury	Returned

Homicide:

First Degree

Second Degree

Third Degree

Manslaughter

Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and			
Kidnapping			
Assaults:			
With intent to Commit Felony 6	1		0
Other Assaults 1	0		0
Libel and Defamation			
Sending Threatening			
Communications			
Arson and Kindred Offenses 1	0		0
Burglary and Kindred Offenses.....10	1		0
Larceny:			
Of Automobiles			
Of Cattle			
Kindred Offenses12	4		2
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds11	0		0
False Pretenses and Kindred			
Offenses 1	0		0
Forgery, Counterfeiting and			
Kindred Offenses 1	1		0
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue...			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc. 0	1		0
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense 1	0		0
Desertion and Withholding Support			
from Wife and Children.... 0	2		0
Miscellaneous Crimes Not			
Otherwise Enumerated:			
Aiding Escape of Prisoners 1	111		0
Medical Laws 1	0		0
Attempt to Commit Grand			
Larceny 1	0		0
Selling Property Under Lien.... 1	0		0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 111; reversed.
 Bond Validation Proceedings, 1; validated.
 Bond Estreature Proceedings, 1.
 Criminal Hearings Attended, 15.
 Habeas Corpus Hearings Attended, 6; 3 remanded.
 Other Cases Not Enumerated Handled by State Attorney, 3.

Respectfully, submitted,

ANGUS SUMNER,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Okeechobee County, Twenty-first Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	0	1
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed	1	0	0
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony			
Other Assaults			
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....			
Larceny:			
Of Automobiles			
Of Cattle	2	0	1
Kindred Offenses	3	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Offenses			
Forgery, Counterfeiting and Kindred Offenses			
Trespasses, Injuring Buildings, etc.			

Offenses Against Public Revenue....
Perjury
Bribery
Misconduct by Officers
Resisting Arrest, etc.
Conspiracy
Adultery, Fornication, etc.
Incest
Bigamy
Miscegenation
Crime Against Nature
Violation Liquor Law, Second Offense
Desertion and Withholding Support from Wife and Children....
Miscellaneous Crimes Not Otherwise Enumerated:

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.
 Bond Validation Proceedings, 3; validated.
 Bond Estreature Proceedings.
 Criminal Hearings Attended, 1; remanded.
 Habeas Corpus Hearings Attended.
 Other Cases Not Enumerated Handled by State Attorney.

Respectfully, submitted,

ANGUS SUMNER,

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Broward County, Twenty-second Judicial Circuit for Two
 Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	0	2
Second Degree	1	0	0
Third Degree			
Manslaughter	1	0	0
Mayhem	0	0	0
Rape	1	1	1
Robbery:			
Armed	2	0	0
Unarmed			
False Imprisonment and Kidnapping	1	0	0
Assaults:			
With intent to Commit Felony 5		0	1
Other Assaults			

Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses	0	2	0
Burglary and Kindred Offenses.....	30	0	6
Larceny:			
Of Automobiles	12	0	0
Of Cattle			
Kindred Offenses	7	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	5	0	0
False Pretenses and Kindred Offenses	1	0	0
Forgery, Counterfeiting and Kindred Offenses	1	0	0
Trespasses, Injuring Buildings, etc. Offenses Against Public Revenue....			
Perjury	1	0	0
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.	2	0	0
Conspiracy			
Adultery, Fornication, etc.			
Incest	2	0	0
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second Offense			
Desertion and Withholding Support from Wife and Children....	3	0	0
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving Stolen Property	1	0	0
Intercourse Female Under 18....	1	0	1

CASES NOLLE PROSSED

Breaking and Entering	7
Acquitted on Account of Insanity (Breaking and Entering)	2
Larceny Automobile	1
Other Larcenies	3

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.
 Bond Validation Proceedings, 25; bonds issued.
 Bond Estreature Proceedings.
 Criminal Hearings Attended; all felony preliminaries.
 Habeas Corpus Hearings Attended, 9; 6 remanded.

Other Cases Not Enumerated Handled by State Attorney:

Liquor Confiscation Cases, 20.

Bill to Restore Rights of Insane Person; Hearings, 1.

Respectfully, submitted,

LOUIS F. MARIE,

State Attorney.

The following "No True Bills" have been returned by Grand Jury, not enumerated in attached report:

Arson	1
Breaking and Entering	1
Larceny	3
Operating Gambling Resort	2
Embezzlement	1
Manslaughter	4

In addition to above enumerated "No True Bills," presentments of grand juries show 14 "No True Bills" returned, without specifying offense charged. This is a result of independent investigations of grand juries, not based upon warrants specifying any particular charges.

Respectfully,

LOUIS F. MARIE,

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Brevard County, Twenty-third Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	10	1	2
Second Degree			
Third Degree			
Manslaughter	2	1	0
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony	9	3	1
Other Assaults	4	1	0
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses	4	2	0
Larceny:			
Of Automobiles			

Of Cattle	1	0	1
Kindred Offenses—Grand			
Larceny	4	2	2
Embezzlement:			
Public Officers			
Public Institutions	0	1	0
Other Kinds			
False Pretenses and Kindred			
Offenses	2	0	0
Forgery, Counterfeiting and			
Kindred Offenses	4	0	0
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers	1	0	0
Resisting Arrest, etc.	0	2	0
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegenation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense	0	1	0
Desertion and Withholding Support			
from Wife and Children....	2	1	0
Miscellaneous Crimes Not			
Otherwise Enumerated:			
Obstructing Ry. Tracks	1	0	0
Shooting into a House	0	1	0
Violation of Banking Laws	5	0	3
Hit and Run Driver	2	0	0
Removing Property under Lien	1	0	0
Using Illegal Nets	0	1	0
Enticing Female to Leave Home	0	1	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, 7.

Bond Validation Proceedings, 10.

Bond Estreature Proceedings.

Criminal Hearings Attended.

Habeas Corpus Hearings Attended, 8.

Other Cases Not Enumerated Handled by State Attorney, 2.

Respectfully, submitted,

WILLARD B. SMITH,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Seminole County, Twenty-Third Judicial Circuit for Two Years, 1929-30, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	9	2	1
Second Degree			
Third Degree			
Manslaughter	0	1	0
Mayhem			
Rape			
Robbery:			
Armed	1	0	0
Unarmed	1	0	0
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit			
Felony	10	3	0
Other Assaults			
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....	14	4	3
Larceny:			
Of Automobiles	4	0	0
Of Cattle			
Kindred Offenses—Grand Larceny	10	2	1
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	2	1	1
False Pretenses and Kindred Offenses	1	0	0
Forgery, Counterfeiting and Kindred Offenses	10	0	2
Trespasses, Injuring Buildings, etc.	0	1	1
Offenses Against Public Revenue...			
Perjury	0	1	0
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.	0	1	0
Incest			
Bigamy	4	0	0

Miscegenation			
Crime Against Nature	2	0	0
Violation Liquor Law, Second Offense			
Desertion and Withholding Support from Wife and Children....	1	0	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Changing Mark of Animal	1	0	0
Receiving Stolen Goods	2	0	0
Aiding Escape	1	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court. 5.

Bond Validation Proceedings, 1.

Bond Estreature Proceedings.

Criminal Hearings Attended.

Habeas Corpus Hearings Attended, 9.

Other Cases Not Enumerated Handled by State Attorney.

Respectfully, submitted,

WILLARD B. SMITH,

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Citrus County, Twenty-fourth Judicial Circuit for Two years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	0	1
Second Degree	1	0	1
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony	2	0	0
Other Assaults			
Libel and Defamation			
Sending Threatening Communi- cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....			
Larceny:			

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Of Automobiles	0	1	0
Of Cattle	10	0	2
Kindred Offenses	6	0	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	15	0	3
False Pretenses and Kindred			
Offenses			
Forgery, Counterfeiting and			
Kindred Offenses	8	0	1
Trespasses, Injuring Buildings, etc.	1	0	0
Offenses Against Public Revenue...			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.	1	0	0
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children	4	0	0
Miscellaneous Crimes Not Other-			
wise Enumerated:			
Violation of Banking Laws	5	0	2
Breaking and Entering	7	0	1
Obtaining Money Under False			
Pretense	1	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Estimated

Appeals from Lower Court to Circuit Court, 6; 5 affirmed.

Bond Validation Proceedings, 4; all validated.

Bond Estreature Proceedings, 1; compromised.

Criminal Hearings Attended, 10.

Habeas Corpus Hearings Attended, 8.

Other Cases Not Enumerated Handled by State Attorney, 0.

Respectfully submitted,

W. C. SCOFIELD,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Hernando County, Twenty-fourth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	0	0	1
Second Degree			
Third Degree			
Manslaughter			
Mayhem			
Rape			
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony			
Other Assaults			
Libel and Defamation			
Sending Threatening Communi- cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....			
Larceny:			
Of Automobiles	1	0	0
Of Cattle	1	0	1
Kindred Offenses	2	0	1
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	1	0	1
False Pretenses and Kindred Offenses			
Forgery, Counterfeiting and Kindred Offenses	4	0	0
Trespasses, Injuring Buildings, etc. 1		0	0
Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.	1	0	0
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegnation			

Crime Against Nature			
Violation Liquor Law, Second Offense			
Desertion and Withholding Sup- port from Wife and Children			
Miscellaneous Crimes Not Other- wise Enumerated:			
Breaking and Entering	7	0	0
Violation of Fish Law	1	0	0
Entering Without Breaking	2	0	0
Attempt to Commit Murder	1	0	0

OTHER CASES HANDLED BY STATE ATTORNEYS

NO RECORD

Appeals from Lower Court to Circuit Court.
 Bond Validation Proceedings.
 Bond Estreature Proceedings.
 Criminal Hearings Attended.
 Habeas Corpus Hearings Attended.
 Other Cases Not Enumerated Handled by State Attorney.

Respectfully submitted,

W. C. SCOFIELD,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering St. Johns, Flagler, Putnam Counties, Twenty-fifth Judicial
 Circuit for Two Years, 1929-1930, Under Section 132, Compiled General
 Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	8	0	0
Second Degree			
Third Degree			
Manslaughter			
Mayhem	1	1	1
Rape	2	0	1
Robbery:			
Armed	2	0	0
Unarmed			
False Imprisonment and Kid- napping	0	0	0
Assaults:			
With intent to Commit Felony 8		2	0
Other Assaults (Rape and Murder)			
Libel and Defamation	0	1	0
Sending Threatening Communi- cations	0	1	0

Arson and Kindred Offenses	2	0	2
Burglary and Kindred Offenses	38	6	2
Larceny:			
Of Automobiles	3	0	0
Of Cattle	9	1	1
Kindred Offenses	3	3	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds	3	2	0
False Pretenses and Kindred			
Offenses	0	2	0
Forgery, Counterfeiting and			
Kindred Offenses	9	0	0
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.	0	1	0
Incest	1	0	0
Bigamy	0	3	0
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense	1 (Not Tried)	0	0
Desertion and Withholding Sup-			
port from Wife and			
Children	3	2	0
Miscellaneous Crimes Not Other-			
wise Enumerated:			
Intercourse Female Under 18.			
2. Disposing Property Under Lien.			
Removing Property Under Lien.			
Disposing Car Under Ret-Title Con.			
Bastardy.			
Fraud.			
Violation Fish Law.			
Operating Car While Intoxicated.			

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, about 10; fifty-fifty sustained and reversed.

Bond Validation Proceedings, Val. Twelve Bond.

Bond Estreature Proceedings, six (totaling over \$30,000).

Criminal Hearings Attended, between 70 and 80.

Habeas Corpus Hearings Attended, 50.

Other Cases Not Enumerated Handled by State Attorney, to be conservative 100.

State attorney is the legal advisor of the Sheriffs of his circuit. Innumerable matters are handled by the State Attorney that cannot be herein listed. In the past two years at a very low figure I have performed over \$30,000 worth of criminal work for the State.

Respectfully submitted,

JULIAN C. CALHOUN,

State Attorney, (Or County Solicitor).

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Bradford County, Twenty-sixth Judicial Circuit for Two Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	0	0
Second Degree			
Third Degree			
Manslaughter	1	0	1
Mayhem			
Rape			
Robbery:			
Armed	4	0	0
Unarmed	0	1	0
False Imprisonment and Kid- napping			
Assaults:			
With intent to Commit Felony..	16	10	1
Other Assaults	1	0	0
Libel and Defamation			
Sending Threatening Communi- cations			
Arson and Kindred Offenses	0	2	0
Burglary and Kindred Offenses	7	0	1
Larceny:			
Of Automobiles	3	0	0
Of Cattle	2	0	0
Kindred Offenses	0	1	0
Embezzlement:			
Public Officers			
Public Institutions			
Other Kinds			
False Pretenses and Kindred Offenses	2	0	0
Forgery, Counterfeiting and Kindred Offenses			
Trespasses, Injuring Buildings, etc.			

Offenses Against Public Revenue....			
Perjury	1	0	0
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.	2	0	0
Conspiracy	0	2	0
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense	0	2	0
Desertion and Withholding Sup-			
port from Wife and			
Children	4	0	0
Miscellaneous Crimes Not Other-			
wise Enumerated	5	14	1

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	2
Bond Validation Proceedings	
Bond Estreature Proceedings	1
Criminal Hearings Attended	4
Habeas Corpus Hearings Attended	1
Other Cases Not Enumerated Handled by State Attorney	3

Respectfully submitted,

H. V. KNIGHT,

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Baker County, Twenty-sixth Judicial Circuit for Two Years,
1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury (No Sufficient Record)	Verdicts of Not Guilty Returned
Homicide:			
First Degree	4	0	0
Second Degree			
Third Degree			
Manslaughter	1	0	0
Mayhem			
Rape	2	0	0
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kid-			
napping			

Assaults:			
With intent to Commit Felony	12	0	1
Other Assaults	1	0	0
Libel and Defamation			
Sending Threatening Communi-			
cations			
Arson and Kindred Offenses			
Burglary and Kindred Offenses	5	0	0
Larceny:			
Of Automobiles			
Of Cattle	5	0	0
Kindred Offenses			
Embezzlement:			
Public Officers	5	0	0
Public Institutions			
Other Kinds			
False Pretenses and Kindred			
Offenses	5	0	0
Forgery, Counterfeiting and			
Kindred Offenses			
Trespasses, Injuring Buildings, etc.			
Offenses Against Public Revenue			
Perjury	1	0	0
Bribery			
Misconduct by Officers	24	0	2
Resisting Arrest, etc.			
Conspiracy			
Adultery, Fornication, etc.			
Incest			
Bigamy			
Miscegnation			
Crime Against Nature			
Violation Liquor Law, Second			
Offense			
Desertion and Withholding Sup-			
port from Wife and			
Children	2	0	0
Miscellaneous Crimes Not Other-			
wise Enumerated:			

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	2
Bond Validation Proceedings	
Bond Estreature Proceedings	
Criminal Hearings Attended	2

Habeas Corpus Hearings Attended 1
 Other Cases Not Enumerated Handled by State Attorney

Respectfully submitted,

H. V. KNIGHT,
 State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Union County, Twenty-sixth Judicial Circuit for Two Years,
 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	1		0
Second Degree			
Third Degree		N	
Manslaughter		O	
Mayhem			
Rape		S	
Robbery		U	
Armed		F	
Unarmed		F	
False Imprisonment and Kidnapping		I C	
Assaults:		I	
With intent to Commit Felony 27		E	0
Other Assaults	2	N	1
Libel and Defamation		T	
Sending Threatening Communications		R	
Arson and Kindred Offenses		E	
Burglary and Kindred Offenses.....	6	C	0
Larceny:		O	
Of Automobiles	1	R	0
Of Cattle	2	D	0
Kindred Offenses	1		0
Embezzlement:			
Public Officers	1		1
Public Institutions			
Other Kinds			
False Pretenses and Kindred Offenses	1		0
Forgery, Counterfeiting and Kindred Offenses			
Trespasses, Injuring Buildings, etc. Offenses Against Public Revenue....			
Perjury			
Bribery			
Misconduct by Officers			
Resisting Arrest, etc.			

Conspiracy		
Adultery, Fornication, etc.		
Incest		
Bigamy		
Miscegenation		
Crime Against Nature		
Violation Liquor Law, Second Offense		
Desertion and Withholding Support from Wife and Children....	1	0
Miscellaneous Crimes Not Otherwise Enumerated	2	0

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court.
 Bond Validation Proceedings.
 Bond Estreature Proceedings.
 Criminal Hearings Attended, 2.
 Habeas Corpus Hearings Attended, 3.
 Other Cases Not Enumerated Handled by State Attorney, 1.

Respectfully, submitted,

H. V. KNIGHT,

State Attorney.

REPORT OF STATE ATTORNEY (OR COUNTY SOLICITOR)

Covering Sarasota County, Twenty-seventh Judicial Circuit for Two
 Years, 1929-1930, Under Section 132, Compiled General Laws.

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Homicide:			
First Degree	2	0	0
Second Degree			
Third Degree			
Manslaughter	1	1	1
Mayhem	1 Plead Guilty	0	0
Rape	1	1	0
Robbery:			
Armed			
Unarmed			
False Imprisonment and Kidnapping			
Assaults:			
With intent to Commit Felony	12	1	Nolle Pros 2
Other Assaults	4	0	Nolle Pros 1
Libel and Defamation			
Sending Threatening Communications			
Arson and Kindred Offenses			
Burglary and Kindred Offenses.....	1	0	0

Larceny:

Of Automobiles	1	1	0
Of Cattle	6	Not Guilty 1	Nolle Pros 2
Kindred Offenses	7	3	Nolle Pros 3

Embezzlement:

Public Officers			
Public Institutions			
Other Kinds	5	0	0

False Pretenses and Kindred

Offenses	3	2	Nolle Pros 1
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Forgery, Counterfeiting and

Kindred Offenses	5	0	1
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Trespasses, Injuring Buildings, etc.

Offenses Against Public Revenue....	0	1	0
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Perjury

Bribery

Misconduct by Officers

Resisting Arrest, etc.

Conspiracy

Adultery, Fornication, etc.	1	0	Nolle Pros 1
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Incest	1	0	0
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Bigamy	1 Plead Guilty	0	0
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Miscegenation

Crime Against Nature

Violation Liquor Law,

Second Offense	2	Not Guilty 1	Nolle Pros 1
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Desertion and Withholding Support

from Wife and Children....

Miscellaneous Crimes Not

Otherwise Enumerated:			Nolle Pros 2
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Breaking and Entering	8	1 Plead Guilty	4
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Entering without Breaking.....	4	0	Nolle Pros 1
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Selling Mtg. Property	1	Not Apprehended	
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Criminal Negligence	0	1	0
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Aiding Lottery	0	1	0
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Driving Drunk	2	0	Nolle Pros 1
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Conducting Lottery	2	0	0
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NOTE: Eleven cases on absentee docket.

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court, none.

Bond Validation Proceedings, none.

Bond Estreature Proceedings, 1; pending.

Criminal Hearings Attended.

Habeas Corpus Hearings Attended.

Other Cases Not Enumerated Handled by State Attorney.

Respectfully, submitted,

WINDER H. SURRENCY,

State Attorney.

SUMMARY OF CRIMINAL PROSECUTIONS IN THE CIRCUIT COURT FOR SARASOTA COUNTY, FLORIDA, AS DISCLOSED BY

BENCH DOCKET: (1921-1930 INCL.)

Sarasota County was created in June, 1921, and until 1927 comprised a part of the Eighteenth Judicial Circuit of Florida. In 1927 the Twenty-seventh Judicial Circuit was created comprising only Sarasota County. E. P. Wilson, Esq., was State Attorney from the Fall Term 1921 until and including the Spring Term 1923; G. B. Knowles, Esq., was State Attorney from the Fall Term 1923 until and including the Spring Term, 1925; Dewey A. Dye, Esq., was State Attorney from the Fall Term 1925 until and including the Spring Term 1927; C. Ray Smith, Esq., was State Attorney from the Special (August-September) Term 1927 until and including the May Term 1929; Herbert S. Sawyer, Esq., was State Attorney from the May Term 1929 until and including the January Term 1930; and J. Velma Keen, Esq., was State Attorney thence until the January Term 1931.

1921-1927:

From the Fall Term 1921 to and including the Spring Term 1927, there were 131 cases docketed for trial, or an average of approximately 22 cases annually. During this period there were 39 convictions, as follows:

Embezzlement	3
Breaking and Entering	7
Forgery	1
Forgery and Uttering Forged Inst.	4
Incest	1
Murder 1st Degree	1
Murder, 2nd Degree	6
Murder 3rd Degree	2
Manslaughter	1
Assault with Intent to Murder	2
Assault to Manslaughter	1
Aggravated Assault	2
Robbery	1
Larceny	4
Second Violation Liquor Laws	3

During the same period here were 21 acquittals; 24 indictments nolle prossed; 6 indictments quashed; 2 judgments arrested; 1 adjudication of insanity; and 6 cases remanded to County Court for trial.

1927-1930

Beginning with the Special (August-September) Term 1927 and ending with the Fall Term 1930, a period of approximately three and one-half years, there were 144 cases docketed for disposition by the Court or an average of about 41 annually. From this number 49 convictions were secured, as follows:

Breaking and Entering	13
Forgery	3
Incest	1
Murder 2nd Degree	1
Assault to Murder	3

Assault to Rob	1
Aggravated Assault	5
Robbery	1
Larceny	14
Cheating and Defrauding	1
Mayhem	1
Rape	1
Entering without Breaking	1
Desertion	1
Bigamy	2

During the same time there were 14 acquittals; 30 indictments nolle prossed; 3 indictments quashed; and 7 cases remanded to the County Court for trial.

NOTE:

The foregoing data are not to be taken as complete or finally authentic since the docket itself does not undertake to show what disposition was made of some cases listed on it. These latter have not been taken into account here. The Court's minutes would have to be resorted to for an accurate tabulation of all cases docketed and their final outcome. It is believed, however, that the data submitted are helpful by way of comparison and are presented for whatever they may be worth.

Respectfully, submitted,

WINDER SURRENCY,

State Attorney.

REPORT OF STATE ATTORNEY FOR TWENTY-EIGHTH JUDICIAL
CIRCUIT, COVERING BAY COUNTY, FLORIDA, 1929-1930

	Indictments Returned by Grand Jury	No Bills Returned by Grand Jury	Verdicts of Not Guilty Returned
Murder	8	0	2
Mayhem	1	0	0
Rape	1	2	0
Assaults with intent to Commit			
Felony	12	4	2
Breaking and Entering	22	9	1
Larceny of Automobiles	1	0	0
Larceny of Cattle	9	0	3
Other Larcenies	5	0	2
Embezzlement by Public Officers	7	1	0
Other Kinds of Embezzlement	3	1	1
False Pretenses	1	0	1
Forgery and Uttering Forged In- struments	7	1	0
Trespass to Real Estate	2	0	2
Perjury	5	0	1
Adultery	1	0	0
Incest	1	0	1
Crime Against Nature	1	0	0
Desertion and Withholding			

Means of Support	12	5	0
Operating Automobile While			
Intoxicated	1	0	0
Keeping House of Ill-Fame.....	1	0	0
Original Investigation on Election			
Fraud	0	11	0
Original Investigation on Arson	0	11	0
Carnal Intercourse with Unmarried			
Female Under 18 Years	2	0	0
Miscellaneous Crimes Not Other-			
wise Enumerated	17	16	2

OTHER CASES HANDLED BY STATE ATTORNEYS

Appeals from Lower Court to Circuit Court	3 Cases
Bond Validation Proceedings	3 Cases
Preliminary Hearings Attended	12 Cases
Habeas Corpus Hearings Attended	1 Case

Respectfully submitted,

C. R. MATHIS,

State Attorney.

XII.

OFFICIAL OPINIONS.

The following are some of the opinions rendered by this office to the Governor and his cabinet during the years 1929-1930, which may be of interest to the public generally:

GOVERNOR.

NOTARY PUBLIC—GOVERNOR AUTHORIZED TO REVOKE
COMMISSION.

January 29, 1929.

Hon. Mallie Martin,

Dear Sir:

I am of the opinion that the Governor has authority to revoke the commission of the Notary Public who willfully or negligently fails to comply with the laws governing his office and especially in the case of a Notary Public who is shown to have made a false certificate in his official capacity.

The Governor, in revoking commission of a Notary Public should be governed, of course, by the same considerations that he would be governed by in disposing of a petition to suspend or remove any other state officer, i. e. he should accord the accused person an opportunity to meet the charge unless the evidence in the first instance is conclusively convincing.

Very truly yours,

FRED H. DAVIS, Attorney General.

KEELEY SANATORIUM—STATE HEALTH OFFICER MAY ISSUE
PERMIT FOR USE OF MEDICINAL LIQUOR.

January 23, 1929.

My Dear Governor:

On January 7th, 1929, Hon. John W. Martin, then Governor of Florida, submitted to me for my opinion, letter received from Ella Jo Stollberg, attorney, of Hollywood, Fla., relating to permit for the use of liquors for medicinal purposes in connection with the proposed new Keeley Sanatorium for the cure of liquor addicts, to be established at Jacksonville, Fla.

Section 7612, Compiled Laws, 1927, contains a provision to the effect that lawful hospitals and sanitoriums, having a Federal permit to have and possess liquors for medicinal purposes may be allowed—by permit given in writing—to have such reasonable amounts of liquor and wine as the State Health Officer may determine; and that the manager or physician in charge of the said hospital or sanatorium shall make monthly reports to the State Health Officer on forms to be provided for by the latter of the amount of liquors and wines received, amount dispensed

and the amount on hand at the end of each month; said permit to be revoked at any time that same is being abused or reports falsified.

My opinion in regard to the matter is that under the provisions of Section 7612, above referred to, it will be lawful for the State Health Officer to issue to the proposed Keeley Sanatorium—if it is found to be a lawful hospital and established for a lawful purpose—a permit in writing, permitting such sanatorium to have such reasonable amount of medicinal liquor and wine on hand as the said State Health Officer may determine provided said sanatorium can obtain from the proper Federal authorities a permit to like effect.

I return herewith correspondence with former Governor Martin on the subject.

Respectfully submitted,

Attorney General.

INDUSTRIAL SCHOOL FOR BOYS—CERTAIN BOYS SHOULD BE DISCHARGED.

My Dear Governor:

I have your communication of January 24th, in which you ask my opinion as to what legal obstacles are necessary to be overcome before boys can be released from the Florida Industrial School at Marianna and returned to their parents where it appears that the boys are from other states and it is practicable to discharge such boys and thereby relieve the Florida institution of the further responsibility for them.

The statutes authorize the release of inmates of the Florida Industrial School for Boys by paroling or placing them upon probation and my suggestion would be that the Board of Commissioners of State Institutions arrange for the delivery of such boys as the Board decides should be released to some person who will undertake to take them out of the State and relieve the Board of further responsibility in connection with them.

I approve of the idea that insofar as practicable all boys in this institution who have parents or guardians in other states should, if possible, be released and returned to the care of such persons in the states from which they came.

Very truly yours,

FRED H. DAVIS, Attorney General.

SPECIAL OFFICERS—APPOINTMENT OF.

My Dear Governor:

Chapter 8539, Acts 1921, Sections 6653-9 inc., Compiled Laws, 1927, provides that upon application of any railroad, express company or other common carrier doing business in Florida the Governor shall appoint one or more special officers for the protection and safety of such carriers, their passengers and employees and the property of such carrier's passengers and employees.

Such special officers are required to be commissioned by the Governor for a term of two (2) years and must give bond, payable to the Governor of Florida and his successor in the penal sum of \$5,000 with

some surety company authorized to do business in Florida as surety thereon, conditioned upon the faithful performance of their duties and to pay all damages done by any illegal act committed by such special officers; said bond to be approved by the Comptroller of the State of Florida.

The letter addressed to you by J. A. Coley, Captain of Police, Southern Railway System, Jacksonville, Fla., dated January 24th appears to be a proper application for the re-appointment of the officers named therein to succeed themselves and you would be authorized to appoint these men under the statute above referred to for a term of two (2) years, to take effect from the date of the expiration of their appointment.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

MUNICIPALITY—WHEN STATE AUDITOR AUTHORIZED TO AUDIT BOOKS.

January 31, 1929.

My Dear Governor:

Referring to your letter of January 24th, transmitting to me communication you have received from Miss Sophie Jean Irving, High Springs, Florida, I beg to advise that under Section 3089, Compiled Laws, 1927, the Governor has power to authorize and direct the Comptroller, by himself or by some competent person, to examine into the affairs of the financial department of any municipality within this State and that it shall be the duty of the Governor to require the Comptroller to make such examination whenever petitioned by at least twenty-five (25%) per cent. of the tax-paying electors of any municipality.

In view of the fact that the State Auditing Department has been created since this Section was originally enacted, my construction is that the Governor might properly direct the State Auditor, in lieu of the Comptroller, to perform this duty in the event that a proper petition were presented to him.

Also, the statute will have to be administered with reference to the time which would be available to the State Auditing Department to make such audit as the auditing of State and County offices is the primary consideration of the Auditing Department and will have to be given first attention, in the event that the work is so great as to prevent the Auditing Department from auditing State and County officials, as well as the municipalities, under this Section.

I return herewith communication referred to me in order that you may advise Miss Irving of the situation.

Very truly yours,

FRED H. DAVIS, Attorney General.

LIQUORS—SEIZURE AND CUSTODY.

February 2, 1929.

My Dear Governor:

In 1925 the Legislature passed Chapter 10217, Acts of 1925, which

is now Chapter 7625, Compiled Laws, 1927, relating to the seizure and custody of intoxicating liquors.

This statute provides that the Clerk of the Circuit Court shall keep and preserve all articles delivered to him by the Sheriff as having been seized under the provisions of the prohibition laws of this State, and in my opinion the conclusive legal effect of such Act is to make it mandatory that the arresting officer who takes into custody illegal or intoxicating liquors or beverages should comply with the provisions of this statute with reference to the custody of such liquors pending trials by turning same over to the Clerk of the Circuit Court for preservation in the manner prescribed in the statute.

Letter dated January 25th from Hon. L. M. Hatton, Jr., Hillsborough County Sheriff, transmitted by your request for opinion dated January 28th, is returned herewith.

Very truly yours,

FRED H. DAVIS, Attorney General.

INDUSTRIAL SCHOOL FOR BOYS—METHOD TO PURSUE TO HAVE
BOY RE-COMMITTED.

February 4, 1929.

My Dear Governor:

I have your letter of February 2nd, in which you requested my opinion as to the proper procedure to be taken on the complaint made to you by Miss Mary F. Price, Probation Officer, Fort Myers, Florida, who is seeking to have recommitted to the Florida Industrial School a boy who has been released from that institution on parole by order of the Board of Commissioners of State Institution, and whose parole subsequently to his release has been apparently ordered revoked by the Board of Commissioners of State Institutions upon the complaint of Miss Price.

It appears that the Circuit Court of Lee County, upon appropriate habeas corpus proceedings, has held that the boy sought to be returned to the institution was entitled to a hearing and jury trial on the charge made against him to the effect that he was participating in petting parties at picture shows and passing obscene notes to certain girls in the schools.

While I am of the opinion under the holdings of the Supreme Court in the cases of *HORNE vs. STATE*, 52 Fla. 125, *ALVAREZ vs. STATE*, 50 Fla. 24; and *HENDERSON vs. State*, 55 Fla. 36, that the Commissioners of State Institutions have the right to revoke a parole granted to a boy who has been conditionally released from the Florida Industrial School for Boys, I am further of the opinion that where the revocation of the parole is sought upon matters of the nature above complained of against the offender, the same amounts to a new charge, which entitles the boy to a new hearing and commitment in the usual way.

In view of the opinion of the Circuit Judge in the matter, my advice is that the Board of Commissioners of State Institutions make no further attempt to have this boy recommitted to the Florida Industrial School

for Boys; and that the local Probation Officer be advised to proceed with the usual complaint in the local courts as for a new offense.

Very truly yours,

FRED H. DAVIS, Attorney General.

MUNICIPALITIES—POLICE POWERS.

February 25, 1929.

My Dear Governor:

I have read the communication from Hon. W. L. Hardester, Mayor, Ponce de Leon, Florida, dated the 16th inst., which you referred to me under date of February 19th, with the request that I render an opinion thereon.

The powers which may be exercised by a city or town under the laws of Florida are dependent upon the special terms of the charter under which the city or town functions to such an extent that it will be impossible to give a definite and official opinion on the matter inquired about by the Mayor of Ponce de Leon.

Ordinarily, a city or town has no right to refuse to permit the transaction of a business which is prescribed by State statutes to be lawful, and for which a license is provided to be issued, permitting the business to be carried on but this rule is subject to the exception that a city or town may be authorized by special charter to exercise its police power to the extent of prohibiting certain businesses even though they are provided to be licensed by the State law.

Trusting this gives the information requested by Mayor Hardester, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

LOCAL BILLS—PUBLICATION.

February 25, 1929.

My Dear Governor:

I have your request of February 19th, for my opinion with reference to the proper construction to be placed upon Section 21, Article III, Constitution of Florida, as amended at the General Election held November 6th, 1928.

The amended Constitution does not apply to the legislation relating to cities and towns. See *STATE vs. DUVAL COUNTY COMMISSIONERS*, 23 Fla. 483, and *MIDDLETON vs. CITY OF ST. AUGUSTINE*, 42 Fla. 287.

In cases falling within the provisions of Section 21, Article III, amended Constitution, it is required that the local law in question either be advertised for thirty (30) days and proof thereof recorded on the Journals of the Legislature or in lieu of advertising, that the local bill be submitted to a referendum vote of the people of the affected community.

This means that a local bill can be passed without a referendum if

it is advertised but not otherwise, unless a referendum vote is provided where no advertising is had.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

OFFICE, STATE—ONE PERSON NOT AUTHORIZED TO HOLD TWO.

February 27, 1929.

My Dear Sir:

I have your inquiry of recent date, in which you referred to me a letter received by you from Mr. Vivian Pinder, 1131 Fleming Street, Key West, Florida, in which inquiry is made as to whether or not a person can serve legally as a member of the Board of Pilot Commissioners and at the same time as a member of the Board of County Commissioners.

The Constitution of the State prohibits a person from holding or exercising the functions of more than one office under the Constitution of the State at one time, and I am of the opinion that where a person holding the position of pilot commissioner accepts and qualifies for the office of County Commissioners, he thereby vacates the office of pilot commissioner and is no longer entitled to exercise the functions thereof.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

FLORIDA STATE CANAL COMMISSION—LIMITATION OF ACT
CREATING.

March 1, 1929.

My Dear Governor:

Pursuant to your request of the 20th ult. I have examined the attached correspondence received by you from Mrs. F. R. S. Phillips, Member and Secretary, Florida State Canal Commission.

The action of the Legislature in creating this Commission is undoubtedly a declaration of policy by the Legislature to the effect that insofar as the State is concerned, it endorses the program stated in the Act, which created the Commission and authorized the Commission to speak for and on behalf of the State of Florida in regard to the Canal in question.

At the same time there is nothing in the statute which prevents any other organization which desires to take a contrary view of the matter from organizing a separate, private and individual association for the purpose of advocating a canal along a different route or to be constructed in a different way.

The purpose of passing an Act of the Legislature and creating a canal commission was to have an official agency which could represent the State in dealing with Congress and insofar as the State's policy is concerned the Commission was created as the sole authority to speak.

Trusting this answers the inquiry made, and returning the correspondence herewith, I have the honor to be,

Respectfully,

FRED H. DAVIS, Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 179
COUNTY JUDGE—WHEN NOT AUTHORIZED TO COMMUTE
SENTENCE.

March 4, 1929.

My Dear Governor:

In the case of *TANNER vs. WIGGINS*, 54 Fla. 203, 45 So. 459, the Supreme court held that generally the power of the trial court, after it has legally imposed sentence and the term at which it was imposed has passed, is at an end except for the purpose of its enforcement. The exclusive control of such sentence is by law vested in other officials.

It was held in the case of *TILLMAN vs. STATE*, 58 Fla. 113, 50 So. 675, that during the same term of court at which sentence is imposed, before the defendant has begun serving his sentence, the trial judge has power to modify such sentence.

In *EX PARTE WILLIAMS*, 26 Fla. 310, 8 So. 425, the Supreme Court held that a court might suspend sentence on payment of costs and defer the remainder of sentence to the next term of court, and at some subsequent term of court could impose sentence, which would be good.

Under the holdings of the Supreme Court in the above cases, I am of the opinion that the Judge who sentenced a prisoner has no right to commute him sentence after the defendant has once begun to serve the sentence imposed.

Trusting this gives you the information desired by Judge Kennerly, whose letter you referred to me, I am,

Respectfully,
FRED H. DAVIS, Attorney General.

FLORIDA FARM COLONY FOR EPILEPTIC—BOARD AUTHORIZED
TO PRESCRIBE RULES AND REGULATIONS.

March 26, 1929.

Dear Sir:

Pursuant to your request of March 12th, I beg leave to render the following opinion:

The Commissioners of State Institutions are authorized to prescribe all rules and regulations not inconsistent with the provisions of law, which are necessary to the government and control of the Florida Farm Colony for the Epileptic and feeble-minded, including admission, transfers and discharges therefrom.

Section 3666, Compiled Laws of 1927, provides that no person shall be sent to the Colony until the application or commitment required by regulations of the Board of Managers has been accepted by them and an order of admission entered.

Section 3665 provides that the Superintendent may issue admission certificates when acting under the order and according to the rules of the Board and, his act in that regard shall be valid and recognized as the act of the Board of Managers.

It is further provided that no female over ten years of age shall be conveyed to the Colony, except by a female official or in the company of female escort, except the female's own father or full brother may act as an escort to the girl. As the purpose of the Institution is said to be for

the purpose of preventing these unfortunates from reproducing their kind, the above last mentioned requirement is evidently to further fortify such purposes being accomplished.

Another further provision is that no female applicant, who is pregnant may be received.

Section 3669 provides that the Board of Commissioners of State Institutions may dismiss any child, whenever it shall appear to be of benefit to the child or to the colony that this be done, and, in such case, it is made the duty of the County Commissioners of the County from which he or she came to remove such child without expense to the State, or failing, the Board shall remove the child and charge up the expense to the county from which the child came.

Section 3671 provides that the Board shall provide accommodations for only such number of inmates from year to year as can be advantageously cared for with the appropriation granted for that year, giving preference first to the girls and women of child bearing age and to those from both sexes, who are most likely to benefit by the special education and training.

Under Section 3677, Compiled Laws, County Judges are only permitted to commit to the Florida Farm Colony a person who is of such feeble mind as to be irresponsible or to require restraint, but not be insane.

In all cases where the parent or guardian of the child is able to do so, the cost of maintenance of the child should be charged up to the parent or guardian and be borne by them.

Before any person is committed to this Institution, the law requires that the County Judge shall ascertain from the superintendent whether or not there are available means at the institution to take care of the person to be committed. County Judges should be advised that the purpose of the institution is as a school for education and training of the epileptic and feeble-minded and as a colony for their segregation and employment whenever the condition of the patient is such as to require that he be restrained on account of being irresponsible but not insane.

As will be noted from the statutes, women and girls of child bearing age should, by reason of mental irresponsibility who would be likely to propagate their kind, be given special preference in being committed to the Institution.

Yours very truly,

FRED H. DAVIS, Attorney General.

DISABLED VETERANS—LAWS RELATING TO.

July 18, 1929.

Hon. Doyle E. Carlton, Governor,
Tallahassee, Florida.

My Dear Governor:

Referring to your communication of July 15, 1929, requesting that

I give a summary of the laws relating to disabled veterans in the State of Florida, I beg to advise as follows:

OCCUPATIONAL LICENSE TAX EXEMPTIONS.

Chapter 13876, Acts of 1929, provides for an exemption of disabled World War Veterans, and disabled Spanish-American War Veterans from the payment of an occupational license tax under the following circumstances:

- (1) That the applicant is a bona fide permanent resident of the State of Florida.
- (2) That he is not only a bona fide permanent resident, but is also an elector of the State of Florida, which means that he must be registered and entitled to vote under the laws of the State of Florida.
- (3) That he served as an officer or enlisted man in the United States Army, Navy, or Marine Corps, during the World War between April 6, 1917, and November 11, 1918; Or in the Spanish-American War between April 21, 1896, and July 4, 1902.
- (4) That he was honorably discharged from the service of the United States after rendering such service.
- (5) That at the time of his application for license he is disabled from performing manual labor.
- (6) That the license which he desires to obtain is a license to engage in any business or occupation in the State of Florida, which may be carried on mainly through the personal efforts of the licensee, who follows the same as a means of earning a living. This includes the right to operate an automobile for hire without paying a For-Hire license fee, provided that the automobile does not exceed 5 passengers capacity, including the driver, and provided it appears that such automobile is either owned or contracted to be purchased by the disabled veteran and is being operated by him as a means of livelihood, and the proper license tag for the operation of such motor vehicle for private use has been applied for and attached to said motor vehicle, and the proper fees therefor paid by the licensee.

This law applies to every tax collecting authority in the state, and now includes Shell Fish Commission, Hotel Commission, and other state agencies which are not previously covered by Chapter 12110, Acts of 1927.

This law also covers exemption from county taxes and city taxes.

Whenever a proper application is made to any tax collecting agency, whether state, county, or municipal, by disabled Veterans of the World War or Spanish-American War, and such Veteran makes the proof required by Chapter 13876, showing his disability to perform manual labor, and also that he desires to engage in a business or occupation, for which a license is required, which business or occupation is to be followed by the Veteran as a means of earning his living, and is limited to such business as will be carried on mainly through the personal efforts of the Veteran, such Veteran should be issued a license in the

regular form provided by law, across the face of which should be marked the words "World War Veterans License," also the words "not transferable." Likewise the same in the case of "Spanish-American War Veterans License."

It is a duty of the tax collecting authority to issue such license without charging fee or other prerequisite of any kind, except proof duly made that the applicant is entitled to credit for, and to receive the exemption provided by the law.

In every case proof of disability to perform manual labor is required, and unless the Veteran is disabled from performing manual labor, he is not entitled to a license without paying for it as provided by law.

Proof of disability to perform labor may be made in either of the following methods:

(1) By producing a certificate showing that the Veteran has a Government rated disability of 10 per cent or more.

(2) By producing the affidavit (not unsworn certificate) of a reputable physician who personally knows the Veteran, and who makes oath that the Veteran is disabled from performing manual labor as a means of livelihood.

(3) By producing a certificate of any post of Spanish-American War Veteran or World War Veteran duly executed under the hand and Seal of the Chief Officer and Secretary thereof, attesting the fact that the applicant is disabled and entitled to receive a license under the law. This certificate must show that the applicant is disabled from performing manual labor, and must state the fact upon which it is based.

(4) By producing a pension certificate showing that the Veteran is drawing a pension from the United States, because of being disabled from performing manual labor.

(5) Any other reasonable proof which may satisfy the tax collector that the Veteran is disabled. This would cover a case where a man who was plainly a cripple by the loss of limbs or otherwise, who personally appeared before a tax collector, who could see his disability by merely looking at him, without having to require a doctor's certificate showing such disability.

All licenses issued under this act are limited to the county in which the disabled Veteran is a citizen, and voter, but if he moves his residence he can transfer his license to his new place of residence, upon having the same countersigned by the tax collector of the county to which he moves.

No Veteran can obtain a license under this act to engage in more than one business or occupation at the same time, though he may change his business or occupation and procure a new license for his new occupation, upon surrendering his old license.

Any Veteran or other person who commits a fraud in obtaining a license under this law, when he is not entitled to it as a disabled Veteran is subject to criminal prosecution, and any person who helps him to do so is also guilty and subject to prosecution.

POLL TAX EXEMPTION.

No exemption from payment of poll tax is given to World War Veterans or Spanish-American War Veterans, unless they were actually disabled "in" the war, in the Army or Navy service. The fact that the Veteran is previously disabled does not entitle him to this exemption which is covered by Section 910, Compiled General Laws of 1927. In case the Veteran has lost a limb or has reached the age of 55 years, he is entitled to an exemption from poll tax regardless of whether or not he was injured in the war. The Veteran is also entitled to an exemption from payment of a poll tax if he is an officer or enlisted man of the Florida National Guard, whether he is disabled or not. See Section 2070, Compiled General Laws.

PROPERTY EXEMPTIONS.

A Veteran of the World War or Spanish-American War is not entitled to an exemption from taxation on his real or personal property, unless he has lost a limb or been actually disabled in the war, or by misfortune which has crippled him since the war. See Section 9 of Article IX of the Constitution of the State of Florida. There seems to be a misunderstanding among the Veterans on this subject, which I will endeavor to make clear.

A Veteran may be entitled to engage in business without paying for a license, because he is disabled at the present time. But he would not be entitled to a real or personal property exemption of \$500, unless he was disabled in the war, or has had an accident since the war, which has made him a cripple or caused him to lose a limb.

Every head of a family residing in Florida is entitled to an exemption of \$500 in taxation on his household goods and personal property effects, but this exemption is limited to household goods and personal effects, and does not include an automobile or personal property of that character. Household goods and personal effects should be construed as referring to furniture, clothing, personal ornaments, and things of that character.

This letter is being written unusually in detail, because of a desire to state in response to the request therefor a complete summary of our laws which may be of benefit to War Veterans, whether disabled or not, and to point out for the information of the officials of the state, and the parties involved the distinction which arise in connection with these various exemptions.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

COMMISSIONERS EVERGLADES DRAINAGE DISTRICT AUTHORIZED AND EMPOWERED TO BORROW MONEY

December 23, 1929.

My dear Governor:

Under Section 1177 Revised General Statutes of Florida, the Board of Commissioners of Everglades Drainage District is authorized and empowered to borrow money temporarily from time to time, for a period not to exceed one year at any one time, and to issue its promissory notes

therefor upon such terms and at such rates of interest as the said Board may deem advisable, payable from the drainage taxes levied and imposed and the increment thereof.

Other provisions of the Acts relating to the Commissioners of Everglades Drainage District sustain the authority of the Board to borrow money temporarily and to pledge taxes as security for the same.

I have carefully examined the Resolution adopted by the Board on December 5th, 1929, certified copy of which is hereto attached, and also the form of note for \$100,000.00 dated December 31, 1929, which is hereto attached, and in my opinion the resolution and note aforesaid are in proper legal form and sufficient in law to bind the Commissioners of Everglades Drainage District for the re-payment of the sum of \$100,000.00 proposed to be borrowed from Central Farmers Trust Company of West Palm Beach, Florida, and are sufficient to amount to a valid pledge of the taxes of Everglades Drainage District collected or to be collected in such amount as may be necessary to provide for the payment of the principal and interest of said note.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE ROAD DEPARTMENT AUTHORIZED TO PURCHASE MOTOR VEHICLES

December 31, 1929.

My dear Governor:

In my opinion, the prohibition of Chapter 13810, Acts of 1929, is against the purchase of motor vehicles by any State officer or employee and is not directed against the purchase of motor vehicles by separate departments of the State Government, such as the State Road Department, Board of Commissioners of State Institutions and other Boards and Commissions consisting of more than one officer. This Act prohibits and makes unlawful the purchase of motor vehicles by "any State officer" or "employee," unless the specific appropriation directing and expressly authorizing the purchase of such motor vehicle has been made. I do not think that a Department consisting of several officials, who together constitute an official Board, which can only act as a Board, falls within the purview of the prohibition of the Act, which only applies as I have pointed out above to either a "State officer or employee" and not to official State Boards, such as I have mentioned above. The evil which led to the enactment of this law was the practice of certain individual officers and employees of the State in using blanket appropriations made to their Departments for the purpose of purchasing motor vehicles and was not intended to operate against the actions of official Boards as distinguished from individuals.

I am, therefore, of the opinion that the State Road Department has authority to purchase such motor vehicles as may be needed by it out of any funds which are available for expenditure by the Department as provided by law, notwithstanding the fact that the Legislature has not passed any bill making a specific appropriation of any portion of same for

the particular purpose of purchasing motor vehicles as mentioned in Chapter 13810.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

MARRIAGE LICENSE—CUSTODY OF

January 21, 1930.

Dear Governor:

This will acknowledge receipt of your letter of January 17th transmitting to me a letter received by you from Hon. W. A. McLeod, County Judge, of Santa Rosa County, with reference to the custody of marriage licenses under Chapter 11869, Acts of 1927.

Chapter 11869 provides that upon the return of each marriage license to the issuing county judge, as provided by Section 3933, Revised General Statutes, the issuing county judge shall forthwith record the same, and shall on or before the 5th day of each month transmit all of the original licenses with endorsements thereon received by him during the preceding calendar month to the Bureau of Vital Statistics.

Chapter 11869, Acts of 1927, is a statute of the State of Florida duly enacted by the Legislature, and so far as I have been advised it has never been declared unconstitutional or set aside by a Court of competent jurisdiction. It appears to me that there is therefore no alternative but for the county judge to comply with the terms of the Statute as enacted by the Legislature until such time if that time ever arrives as the same shall be set aside or altered either by the Legislature or by the judgment of some Court of competent jurisdiction.

The Statute is silent as to what shall be done with the affidavit for license, which is required to be filed under Section 5850, Compiled General Laws, but it appears to me to be proper that such affidavit should be filed and kept by the same custodian as a part of the marriage license itself, so that if the original license is forwarded to the Bureau of Vital Statistics, it would appear that the application for license should be sent there also.

It appears to me that adequate forms could be provided under Section 7 of Chapter 11869, which would allow for the taking of affidavits, and the issuance of marriage licenses in duplicate, or such other form as would enable both the county judge and the Bureau of Vital Statistics to have a record satisfactory to each.

I return herewith the letter sent to you by Judge McLeod.

Yours very truly,

FRED H. DAVIS, Attorney General.

COMMISSIONER OF DEEDS FOR COUNTY OF WEXFORD IRELAND

April 29, 1930.

Dear Sir:

Answering your letter of April 22nd, requesting my opinion on the above subject, I beg to advise that Section 486 of the Compiled General Laws empowers the Governor to name, appoint, commission one or more Commissioners of Deeds in each State or foreign country, such Commissioner of Deeds to hold office for four years. Such Commissioner of Deeds

are authorized to take acknowledgement of papers and administer oaths in the country for which they are appointed.

I am of the opinion that you have authority to name Mr. James J. O'Connor, 45 North Main Street, Wexford, Ireland, as Commissioner of Deeds for Ireland, to hold office for a term of four years, with full power to act as such after taking the oath as such Commisisoner prescribed by Section 488. No bond appears to be required of a Commissioner of Deeds.

Yours very truly,

FRED H. DAVIS, Attorney General.

FISH HATCHERY—RE-CONVEYANCE OF LAND DEEDED TO STATE

October 20, 1930.

Dear Sir:

This is in answer to your letter of October 13th, requesting opinion as to how property deeded to the State Game Department at Laurel Hill for the purpose of building a fish hatchery may be re-conveyed to the grantor in view of the fact that the property cannot be used for the purpose for which conveyed.

Under Section 7 of Chapter 11838, Acts of 1927, which was the law in force at the time the conveyance you refer to was made to the State Game Department was authorized to acquire in the name of the State lands suitable for the propagation of fish. It was also provided in that Act that the title of said land acquired by purchase, gift or otherwise should be approved by the Attorney General and that deeds to such lands should be deposited as are deeds to other state lands.

Assuming that the conveyance was made in the manner contemplated by Section 7 of Chapter 11838, it appears to me that the land can be re-conveyed to Mr. Steele, the grantor, by a proper conveyance executed in the manner prescribed by Section 14 of Article IV of the Constitution of the State of Florida, which provides for such conveyance to be made in the name and under the authority of the State of Florida, sealed with the great seal of the State, signed by the Governor and countersigned by the Secretary of State. I think it would also be advisable to have the present State Game Commissioner join in the deed as a grantor.

Trusting this is the information you are seeking, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SECRETARY OF STATE

CORPORATIONS—FOREIGN; INCREASE CAPITAL STOCK; CREDIT
FOR FEES PAID ON FILING CHARTER

January 22, 1929.

Dear Sir:

Section 6027, Compiled Laws, 1927, provides that upon the filing of of copy of a charter of a foreign corporation the Secretary of State shall —if the objects of the corporation are such as are not prohibited by the laws of Florida—issue a permit to such corporation after he shall have received from it for the use of the State a sum equal to that which the

said foreign corporation would have been required to pay as a charter fee if it had been incorporated under the laws of Florida.

In the case of *STATE vs. CRAWFORD*, 90 Fla. 264, 105 So. 446, the Supreme Court construed this to mean that the fee for a permit to a foreign corporation provided for in this Section relates to the charter fee required of local corporations incorporated at the time the permit was delivered to the foreign corporation.

I am, therefore, of the opinion that in calculating the amount of charter tax due to be paid by the Hercules Powder Company, referred to in your letter of January 18th, 1929, the amount of the present fees should be computed on the basis of the scale provided for by Section 6582, Compiled Laws, 1927, relating to fees collectible from domestic corporations after giving credit as a deduction therefrom of the amount of the authorized capital stock of the corporation at the time it originally filed its charter in the office of the Secretary of State, which has already been previously paid for.

It appears to me to be the purpose of our statutes, as construed by the Supreme Court in the above case, to put foreign and domestic corporations on the same basis with reference to charter fees, and therefore, as to the filing of a charter of a foreign corporation in the first instance or as to an amendment to one already filed, increasing the capital stock.

The scale which should be used is a scale of fees provided for by the 1925 Corporation Law, Section 6582, Compiled Laws, 1927.

It also appears to be the intention of the statute to give to corporations increasing their capital stock the benefit of any payments made with relation to the authorized capital stock prior to the time an increase or change in the capital stock was made by amendment.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX COLLECTING AGENCY—COUNTY JUDGE SHALL REQUIRE BOND BEFORE ISSUING LICENSE

Dear Sir:

Section 6 of Chapter 12414, Acts of 1927, provides that before granting any license to a tax collecting agency, "the County Judge shall require" such tax collecting agency to give bond with sufficient surety, approved by said Judge in the sum of \$10,000.00, payable to the State of Florida, for the use of any person damaged by reason of any unlawful act of such tax collecting agency.

You will notice that the language of the Act is that the "County Judge" shall require the tax collecting agency to give bond, and my opinion, therefore, is that the bond in question should be given to the County Judge and kept by him in his office, as he not only "required" the bond, but the law says that he must approve the bond. Furthermore, the law provides that a separate bond be given for each county in which the tax collection agency does business, and this emphasizes the fact that the bond should be filed with the County Judge.

Trusting this answers your letter of April 14th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

FOREIGN CORPORATION.—WHEN PERMIT FOR DOMESTICATION
ISSUED SPECIAL DESIGNATION REQUIRED

April 16, 1929.

Dear Sir:

I have your letter of April 16th in which you ask my opinion as to whether or not you should issue a permit under the law for the domestication of a foreign corporation under the name of Western Auto Supply Company in view of the fact that there is now of record in your office a Certificate of Incorporation which has been granted to Western Auto Supply Co., Inc. In view of Section 6033 (4102) Compiled General Laws which provides as follows:

Permit not to be issued when name of corporation similar to Florida corporation. No permit under this Article shall be issued to any foreign corporation to transact business or acquire, hold or dispose of property in this State under any corporate name which is or may be the same as the corporate name of any corporation organized or existing under the laws of the State of Florida, or so nearly similar thereto as to cause or tend to cause confusion. (Ch. 5717, Acts 1907, amended by Ch. 6484, June 7, 1913, Par. 1.)

As I construe the above Section 6033, there is no prohibition imposed by law except that imposed upon the Secretary of State in regard to the kind of permit which he should issue in cases where there are Florida corporations and a foreign corporation having substantially identical names, and the foreign corporation desires to domesticate in this State under a name which is identical or almost identical with that of a domestic corporation.

My view of the law is, where such a situation occurs as in the instant case, namely: Where a foreign corporation under the name of Western Auto Supply Company seeks a permit to do business in this State under that name, when it appears that there is already incorporation in this State a corporation under a substantially similar name, to-wit: Western Auto Supply Co., Inc., the Secretary of State should only issue such permit to the foreign corporation to transact business or acquire, hold or dispose of property in this State when the corporate name of the foreign corporation, as given in the permit, is so limited in the permit itself as issued by the Secretary of State that the foreign corporation, after it begins to do business in Florida under such permit, will not cause confusion with the name of the local or Florida corporation; therefore, I am of the opinion that, under Section 6033 above referred to, you would be authorized to grant a permit for the domestication of the Western Auto Supply Company on condition that it attach to its name some special designation, as, for example, "of Missouri" which would make the permit read that the Western Auto Supply Company is authorized and permitted to do business in Florida under the name of Western Auto Supply Company of Missouri, or some such similar identifying words which will remove the chance of confusion with the Florida corporation.

It will be noted that the language of the statute is that no "permit" shall be issued to transact business under "any corporate name" which is or may be the same as the name of a Florida corporation. The restraint

of the statute is against the issuance of permits to foreign corporations to use particular "names" of a nature likely to be confused with a local corporation, and is not a restraint on the right of a corporation to be granted a permit to do business in Florida merely because its name by itself happens to be the same as or similar to that of a foreign corporation.

I am furthermore of the opinion in this particular case that the names "Western Auto Supply Co., Inc." and "Western Auto Supply Company" are so dissimilar as not to be within the purview of the above statute, even if it should be construed as relating to the right of the corporation to do business than the right of the foreign corporation to use a particular name.

I am, therefore, of the opinion that you are authorized to issue a Certificate of Domestication to the foreign corporation incorporated under the laws of Missouri in the name of "Western Auto Supply Company," although I would suggest that you provide in the permit that such corporation shall append to its name, wherever used in this State, the designation "of Missouri" or "incorporated under the laws of Missouri" as a further means of distinguishing it from the Florida corporation named Western Auto Supply Co., Inc.

I might add that the evidence presented to me shows that the Western Auto Supply Co., Inc., is a defunct corporation no longer functioning in the State of Florida and its existence is therefore nominal only.

Yours very truly,

FRED H. DAVIS, Attorney General.

TRADE MARKS—ASSIGNMENT OF

December 17, 1929.

Dear Sir:

Section 7085, Compiled General Laws, provides that persons owning trade marks may protect the same by filing same in the office of the Secretary of State. Trade marks are property and as such are subject to assignment and sale.

In my opinion, a trade mark which has been duly filed in the office of the Secretary of State under Section 7085, Compiled General Laws, can be legally assigned by the person owning the same, and such assignment can itself be filed and recorded in the office of the Secretary of State in like manner as the trade mark is originally registered.

In filing assignments and transfers of trade marks, the Secretary of State should require the same kind of application to be made as he would require in the case of an original filing, but such application should be accompanied by the assignment and transfer of the trade mark from the registrant, thereof showing such assignment and transfer. In other words, when an assignment of trade mark has been made, the assignee should apply for a record thereof in the manner provided by Section 7085, and accompany his application with the assignment. The Secretary of State then in effect re-registers the trade mark in the name of the new owner, and collects therefor the same fees.

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS—EVIDENCE OF DISSOLUTION SHOULD BE FILED
OFFICE SECRETARY OF STATE

January 15, 1930.

Dear Sir:

This is in reply to your letter of January 7th asking my opinion as to the necessity of filing evidence in your office when a corporation has been dissolved by court decree under Section 4091, Revised General Statutes of 1920.

In my opinion a certified copy of the final decree of dissolution in such cases should be filed with your office, even though there may not be any direct and unequivocal expression in the Statutes to that effect. The corporation laws as a whole contemplate that the public shall be in a position to ascertain from the office of the Secretary of State the status of any particular corporation, and this can not be done if corporations can be dissolved without filing evidence thereof with your office.

It also appears to me that the Secretary of State is a party "interested" within the meaning of Section 4091 (Section 6020, Compiled General Laws) who should be notified in connection with a petition for dissolution.

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS. FOREIGN—AGENT UPON WHOM PROCESS CAN
BE SERVED

April 22, 1930.

Dear Sir:

Section 5996, Compiled General Laws, provides that every foreign investment company shall file with the Comptroller its written consent, irrevocable, that actions may be commenced against it in proper court of any county in this State in which a cause of action may arise, or in which the plaintiff may reside, by the service of process upon the Comptroller and stipulating that such service of process shall be valid.

In my opinion, where a company complies with the provisions of Section 5996 and designates the Comptroller as the person upon whom service against it shall be made, it is not necessary that such foreign corporation designate a resident agent under the 1927 resident agent law.

Trusting this answers your letter of April 15th on the above subject, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS—FEES FOR DOMESTICATION OF FOREIGN
CORPORATIONS

June 12, 1930.

Dear Sir:

Prior to the passage of Chapter 13640, Acts of 1929, the Florida law required that each foreign corporation which sought domestication under the laws of Florida and a license to do business in this State, should

pay to the Secretary of State for the use of the State treasury fees based upon the total authorized capital stock of the corporation.

The 1929 act distinctly provides that in every case where application is made to the Secretary of State for the issuance of a permit to a foreign corporation to do business in Florida, the Secretary of State shall demand and receive from the applicant for the use of the State "a fee calculated upon the basis of the total authorized capital stock of the corporation as shown by its charter", unless the applicant shall make it appear that the amount of capital of such foreign corporation employed or to be employed in the State of Florida is less than the total amount of authorized capital stock shown by the charter of such corporation.

The statute was amended to meet the holding of the Supreme Court of the United States in the case of *Cudahy Packing Company vs. Hinkle*, 278 U. S. 460, 73 L. Ed. 454, wherein the Supreme Court of the United States held the license fees could not be exacted from a foreign corporation to do an interstate business based upon its authorized capital stock, by a state in which only a small portion of its property was located and a relatively small proportion of its business transacted.

The purpose of the amendment made by the 1929 Act was to preserve the pre-existing law requiring license fees payable by a foreign corporation, to be based upon the authorized capital stock of the corporation, but to permit any corporation to make a showing to the Secretary of State for a reduction in the amount of fees based on authorized capital, where the capital employed or to be employed in the State is less than the total amount of authorized capital stock.

I take the statute to mean that there is a presumption to the effect that the authorized capital stock of the corporation is the equivalent of the capital to be employed in Florida until the contrary is made to appear, and that such presumption continues in its entirety except insofar as a basis for a reduction based upon actual capital employed is not shown.

I am therefore of the opinion that in every case the Secretary of State should demand from foreign corporations and require them to pay upon the basis of total authorized capital stock, as shown by the charter, except where the corporation makes a specific and clear cut showing that a portion of its authorized capital is employed or to be employed in other States.

This in practical effect requires a corporation to do business in several different states to apportion and allocate to each of them some portion of its capital stock as a basis for determining what portion of the same is to be taxed in Florida.

Where a corporation seeks to file its charter in the office of the Secretary of State and secure a permit to do business in Florida for the purpose of selling a part of its stock in this State, it should certainly be held that the capital stock proposed to be sold in Florida is capital to be employed in Florida and payment required to be made upon it according to the statutory basis of prescribed fees.

Any other interpretation of the law will simply mean that corporations will procure their charters in other States for the purpose of transacting business in Florida and selling their stock here without paying anything more than a simple filing fee for the privilege, on the asser-

tion that no part of their capital is to be employed in this State. The word "capital" and "capital stock" seem to have almost equivalent meaning in the sense that they are used in the 1929 statute.

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS—STOCK SUBSCRIPTIONS BY ORIGINAL
INCORPORATORS

June 20th, 1930.

Dear Sir:

This is in answer to your letter of June 9th., which requests my opinion on the proposition of whether or not in preparing a certificate of incorporation under Chapter 10096, Acts of 1925, Section 6527 of the Compiled General Laws, et seq, it is only necessary to show in said certificate one person as a subscriber to the stock of the corporation, or whether it is necessary for at least three of the incorporators to subscribe for stock and show the same on the original certificate.

Section 6529 of the Compiled General Laws, provides how three or more persons may become a corporation. One of the requirements is that they shall make, subscribe, acknowledge and file in the office of the Secretary of State a certificate setting forth the name and postoffice address of each subscriber of the certificate of incorporation and a statement of the number of shares of stock which he (each subscriber) agrees to take. It seems to me to be plain that the law requires that each subscriber of the certificate of incorporation to also be a subscriber of one or more shares of stock of the corporation proposed to be incorporated. This has been the uniform interpretation of the law ever since it was passed and it has been so held by the office of the Secretary of State for the past five years. I, therefore, give it as my opinion that at least three of the incorporators of a corporation proposing to file a certificate of incorporation under the law must not only be subscribers to the certificate of incorporation but must indicate therein that they are subscribers to the stock of the corporation and indicate the number of shares to which they have subscribed.

Trusting this information will be of assistance to you, I am, ~

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS: CO-OPERATIVE MARKETING ASSOCIATION

August 1st, 1930.

Dear Sir:

Replying to your letter of July 28th., asking for my opinion on the above subject, I beg to advise that Section 6486 of the Compiled General Laws provides in general terms that any corporation or association organized under previously existing statutes may by a majority vote, etc. be brought under the provisions of Chapter 9300, Acts of 1923, Laws of Florida, Section 6466, et seq. Compiled General Laws.

In my opinion the terms of Section 6488 are broad enough to authorize any corporation heretofore incorporated and existing under any of the laws of the State of Florida, whether for profit or not for profit, to

be brought under the terms of Chapter 9300 in the manner pointed out by Section 6488, provided the future charter and organization of the corporation is such as to adapt it to the requirements of Chapter 9300 in future. While Section 6488 provides that the re-incorporation shall be made upon blanks furnished by the Secretary of State, I do not think that the requirement of blanks is indispensable but that the Secretary of State may accept any form which he sees fit. The provisions of the statute referring to blanks were intended more to confer a power upon the Secretary of State to require a particular form to be used than it was to impose a duty upon the Secretary of State to furnish the blanks and provide the form.

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS—CERTIFYING TO GOOD STANDING

August 18, 1930.

Dear Sir:

This is in answer to your letter of August 14th requesting my opinion as to whether or not the Secretary of State has authority to give or should give certificates under his hand and seal showing that a corporation is in good standing under the laws of the State of Florida, or that a corporation is not in good standing under the laws of the State as the case might be.

In my opinion the Secretary of State as the administrative officer of the government, having control of the records relating to corporations and also of the law relating to the administration of the qualifications and creating of charters to corporations, has the right and authority not only to make certificates concerning the contents of the records of his office, but to make certificates showing that a particular corporation has or has not complied with the laws of the State of Florida relating to corporations, insofar as doing the things required to be done through the Secretary of State's office is concerned.

However, the Secretary of State would not be authorized to give a certificate that any corporation is in good standing in the State of Florida, when such corporation is known to the Secretary of State not to have complied with any of the laws of the State of Florida relating to corporations, insofar as the administration of said laws is vested in the office of the Secretary of State.

The 1927 resident agent law is one of the laws which is administered under the jurisdiction of the Secretary of State and therefore the Secretary of State has the right and authority to make certificates as to whether or not particular corporations have or have not complied with this law, as well as any other law of similar character.

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—COMMISSION TO WOMAN ELECTED TO OFFICE
AFTER CHANGE IN NAME BY MARRIAGE SUBSEQUENT
TO ELECTION

December 11, 1930.

Dear Sir:

The opinion hereinafter given is based upon the following state of facts.

Mrs. R. L. Eaton, a widow, was nominated by the Democratic party for the office of Railroad Commissioner, and under the name of Mrs. R. L. Eaton her nomination was certified to be printed upon the general election ballots and her name was printed upon such ballots and she was voted for and elected to the office of Railroad Commissioner for the term beginning January, 1931. The election was held November 4th, 1930, and subsequent thereto the State Canvassing Board met and declared Mrs. Eaton elected to the office of Railroad Commissioner and made and filed the statutory certificates of election showing that Mrs. R. L. Eaton was so elected under that name to the office of Railroad Commissioner.

It now becomes the duty of the Governor to issue Mrs. Eaton a commission evidencing her election to office as required by the Constitution of this State. It has been made to appear to the Governor and to the Secretary of State that although Mrs. R. L. Eaton was elected under that name to the office of Railroad Commissioner that she has subsequent to the election married one A. B. Green, and that her name is now Mrs. Mamie G. Green. The question is whether or not the Governor is authorized upon evidence being presented to him to that effect to issue a commission to Mrs. Mamie G. Green as Railroad Commissioner of the State of Florida upon proof submitted that the said Mamie G. Green is the same as the Mrs. R. L. Eaton who was elected.

In my opinion commissions issued by the Governor evidencing elections to office should follow the name shown in the certificate of election made by the State Canvassing Board in the case of State officers, regardless of the change in marital status and consequent change in name of a woman who has been elected to office under her name before her marriage.

Unquestionably, there would be great political value to the woman in such a case if she could be commissioned and serve in office under her name as changed by marriage, thereby bringing her newly acquired married name before the public with as much prominence as that acquired by her name as existed prior to marriage. Personally, I think that the law should expressly permit a married woman to be commissioned under her newly acquired married name in such a case. But I doubt the legality of doing so under the present laws of Florida which control in the premises.

The question, however, is one in my judgment which is of sufficient interest to have settled by higher authority than myself, and consequently I suggest that the matter be called to the attention of the Governor so that he can request an advisory opinion of the Supreme Court on the subject, which will serve as a precedent for this and all future cases of

like character. The Supreme Court can make law where I can only follow it.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

NOTARIES PUBLIC—DATE OF COMMISSION

December 16, 1930.

Dear Sir:

Section 479, Compiled General Laws, provides for the appointment by the Governor of notaries public. Notaries public are recognized by the Constitution of the State as being State officers. Section 15 of Article XVI. They are therefore subject to the same regulations that govern other offices and the appointment to and qualification therefor.

The office of notary public has been created by the Legislature under Section 27 of Article III of the Constitution and the appointment thereof vested in the Governor, who is required to commission same under Section 14 of Article IV of the Constitution. Section 459, Compiled General Laws, expressly provides that no commission shall be issued by the Governor of this State to any person who is by law required to give bond, until after such bond shall have been duly executed, approved and filed in the office where it is required by law to be deposited and official notice thereof given to the Governor.

Section 460 provides that every commission issued by the Governor shall be recorded in the office of the Secretary of State in a book to be provided for that purpose. The Supreme Court has held that these provisions of the statute must be strictly complied with. See Advisory Opinion to the Governor, 65 Fla. 434.

Consequently, although a person has been regularly appointed by the Governor as a notary public, and he has accepted the seal and filed his oath of office, no commission can be issued by the Governor until after the bond has been approved and filed in the office of the Secretary of State as provided by law. The date of the Governor's commission must, therefore, be on or after the date of the filing of the bond, regardless of when the bond was approved by the County Commissioners or by the Comptroller. The mere fact that the bond recites that the appointment was made at an earlier date does not prevent the bond covering the full term of four years, because the law will be read into such a bond regardless of what the bond may recite.

I am unable to find any lawful way by which you can pre-date the Governor's commission of a notary public, so that the same will be dated as of a day prior to the actual filing of the notary public bond in the office of the Secretary of State as provided by law. The Governor's commission is to evidence the qualification of the officer to act under his appointment. In the case of an appointment of a notary public the term of office begins on the date of qualification and runs for four years thereafter, regardless of when the Governor made the initial announcement of his appointment, and regardless of when the appointee accepted

the appointment tendered, or procured the approval of his bond by local authorities.

I am therefore compelled to advise you that there is no legal way that I know of by which you can date a notary public commission back to a date prior to the time the official bond was actually filed in your office as shown by your records.

Papers in the matter that you have submitted to me are herewith returned.

Yours very truly,
FRED H. DAVIS, Attorney General.

COMPTROLLER

CHAIR OF AMERICANISM AND SOUTHERN HISTORY AT UNIVERSITY OF FLORIDA AND FLORIDA STATE COLLEGE FOR WOMEN—CONSTRUCTION OF CHAPTER 12442

March 13, 1929.

Dear Sir:

Replying to your letter of March 12th., in which you request my construction of Chapter 10030, Acts of 1925, as amended by Chapter 12442, Acts of 1927, which provides for establishing a Chair of Americanism and Southern History at the University of Florida, and a like Chair at the Florida State College for Women, I beg to advise as follows:

Chapter 12442, Acts of 1927, has the effect of re-writing Sections 1 and 3, of Chapter 10030, Acts of 1925, leaving Section 2 of Chapter 1003, Acts of 1925, in full force and effect as a part of existing law.

Section 3, of the Act as amended, appropriates an aggregate amount of Five Thousand (\$5,000.00) Dollars per annum for carrying out the provision of the amended Act, namely the establishment and maintenance of a Chair of Americanism and Southern History at the University of Florida, and a like Chair at the Florida State College for Women, which sum of money, together with the amount of an Endowment Fund, which may accrue under Section 2 of the Act, shall be used for the purpose of carrying out the intent of the statute.

The way in which the money is to be spent and the amount to be allotted to the University of Florida, and the amount to be allotted to the Florida State College for Women, out of the Five Thousand Dollars appropriated, is to be determined and fixed by the State Board of Control, which has general supervision and jurisdiction over the University of Florida and the Florida State College for Women. It was probably the legislative intent to divide the Five Thousand Dollars equally between the two institutions, in view of the fact that Section 3, which originally appropriated Twenty-five Hundred (\$2500.00) Dollars per annum, was amended to include Five Thousand Dollars per annum, when the Florida State College for Women was embraced in the Act. However, the Board of Control is at liberty to distribute the money on some other basis, if it shall deem a change advisable.

The Endowment Fund mentioned in Section 2, of the Act, is to be considered as an additional amount to be used in such a way by the

Board of Control as may be embraced in the terms of the condition, under which the endowment was made to the State and accepted by the Board of Control and State Board of Education. In other words, if an endowment was made to be used exclusively at one institution and accepted under such condition, there would be no authority to change the terms of the trust under which the money was endowed. On the other hand, if the endowment was a general fund for the purpose of carrying out the Act, it would be subject to be disposed of any way the Board of Control fixed with the approval of the State Board of Education.

Yours very truly,

FRED H. DAVIS, Attorney General.

NATIONAL BANKS—SHARES OF STOCK TO BE ASSESSED UNDER
AUTHORITY GIVEN BY CONGRESS

April 13, 1929.

Dear Sir:

Several letters have been referred to me and have come into this office from Tax Collectors of the several counties, with regard to the effect of the opinion of the Supreme Court of Florida in the case of J. S. Roberts, Tax Collector, vs. American National Bank of Pensacola, a Corporation, on the right to collect taxes assessed against National Banks in the State of Florida.

The opinion of the Supreme Court in question does not hold that National bank shares cannot be taxed at all, but that such shares cannot be taxed except under such authority as Congress has given to the State to tax them. Congress has consented to the taxation of shares of stock in national banks where the tax imposed is not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens in the State coming into competition with the business of national banks. Therefore, the answer to inquiries being made depends upon ascertaining the facts in each particular case of whether or not shares of stock in national banks have been alone singled out and placed upon the tax books, without assessing other money capital in the hands of individual citizens of Florida coming into competition with the business of national banks. If, as a matter of fact, it appears that there are other individuals in the County employing moneyed capital in competition with national banks and such moneyed capital has not been assessed in the county where national bank shares have been assessed, then the tax upon such national bank shares cannot be collected under the rule laid down in the Roberts case, and it would be useless to attempt to enforce such collection by legal means.

As the Supreme Court pointed out in the Roberts case:

"The remedy in such a case is a duly authorized and proper assessment of all property liable to be assessed."

In order to make an assessment of shares of stock in a national bank valid, it is also necessary that the shares of stock in question be assessed against the owners thereof and not against the bank itself.

A copy of the opinion of the Supreme Court in the two bank case decisions in connection with the right to assess shares of stock in national and state banks has been mailed to each County Attorney in the State

of Florida by this office, and my advice is that each Tax Collector lay the matter before his County Attorney with a view of determining whether or not the tax assessment as made in his county would be invalid under the decisions of the Supreme Court in the Roberts case and in the Folsom case, and, in the event that such County Attorney finds that the tax as assessed is invalid, or unenforceable, such tax should be written off the tax books as an "insolvency". It is probable that legislation will be enacted at this session of the Legislature providing for the proper assessment of shares of stock in national and state banks and authorizing the back assessment of such shares, where such shares have not been legally taxed in the past, and the taxes thereon paid by the holders of the shares, or by the bank as the agent of such holders.

I suggest that a copy of this letter be sent to all Tax Collectors in the State, in order that the numerous inquiries about the situation may be answered in advance.

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAX CERTIFICATES—WHEN AUTHORIZED TO BE CANCELLED BY
COMPTROLLER**

May 11, 1929.

Dear Sir:

I have your request of May 8th, 1929, asking for my opinion as to whether or not there is any statute of the State of Florida which will authorize your granting or authorizing relief to persons who paid moneys to the defaulting Clerk of the Circuit Court of Monroe County, Florida, for tax redemptions and who failed to obtain redemption of the taxes for which they paid.

Section 1009 Compiled General Laws authorizes the Comptroller, upon receipt of a certificate from a Clerk of the Circuit Court, if satisfied of the correctness thereof, to cancel tax certificates held by the State or by individuals whenever it is made to appear that there is some error or omission which invalidates the same, or for any other cause.

I have heretofore expressed an opinion that the purpose of the enactment of Section 1009 Compiled General Laws of Florida was to authorize the Comptroller of the State, without the necessity of obtaining special legislation in each case, to make such corrections, adjustments and cancellations of outstanding tax certificates as could be authorized upon the strength of some matter of record which would render the Tax Sale Certificate invalid or unenforceable. I am, therefore, of the opinion that, under Section 1009 Compiled General Laws of 1927, tax certificates, for which redemptions were paid to the Clerk of the Circuit Court of Monroe County, Florida, and later which moneys were paid to him were embezzled by the Clerk, can be cancelled by the Comptroller under the proceedings provided for in Section 1009 Compiled General Laws.

The administration of this matter should be handled by having the present Clerk of the Circuit Court of Monroe County, Florida, certify to the Comptroller in each case that satisfactory evidence has been submitted to him, that payments for the redemption of the certificates proposed to be cancelled were, in fact, made to the defaulting Clerk of the

Circuit Court of Monroe County and that, under the authority granted to the Comptroller under Section 1009 Compiled General Laws, the certificate should be cancelled because it had, in fact, been redeemed, and therefore, had become invalid by reason thereof.

The Clerk of the Circuit Court of each County acts as the Agent of the State and County in receiving moneys for the redemption of tax certificates and, where such Clerk embezzles money paid over to him for the redemption of tax certificates, it appears to me that, when that fact is satisfactorily established, the proceedings provided for in Section 1009 are broad enough to authorize the granting of relief to the person who paid for the redemption of the certificate because, if the certificate was, in fact, redeemed by payment of purchase from the Clerk and no record thereof made, this is a matter which could be remedied by judicial proceedings, and it was the intention of Section 1009 to authorize the cancellation of those tax certificates which would otherwise be open to invalidation by legal action.

Yours very truly,

FRED H. DAVIS, Attorney General.

DELINQUENT TAXES—METHOD OF COLLECTING AND REMITTING

August 7, 1929.

Dear Sir:

Section 6 of Chapter 14572 provides that all uncollected or delinquent taxes which have heretofore been levied for principal and interest for bonds issued by any County of the State of Florida or special road and bridge district shall be collected in the manner provided by law, and the payment of the same enforced in like manner, and when collected, remittance shall be made by the county official receiving the same to the State Treasurer as County Treasurer ex officio, during each month, on the last day of the month, with a statement showing sources from which said collection was made.

Section 1004 of the Compiled General Laws of Florida, 1927, provides that it shall be the duty of the Clerk of the Circuit Court, within the first ten days of every month, and oftener if required, to make a detailed report to the Comptroller of all sales and redemptions in his office during the previous month of the certificates belonging to the State, giving the amounts received for the face of the certificates and interest separately and shall remit the amounts with his report and the Comptroller shall remit to the "proper officer" the amounts due the State, county and sub-districts respectively, and shall receive receipts for the same in due course.

Chapter 14486, Acts of the Special Session of 1929 creates a State Board of Administration for county sinking funds for County and special road and bridge district bonds and makes the State Treasurer County Treasurer ex officio.

I see no necessary conflict between these several provisions of the law. While Section 6 of Chapter 14572 says that the delinquent taxes collected for principal and interest on County and special road and bridge district bonds shall be remitted by the county official receiving same to the State Treasurer as County Treasurer ex officio, and Section

1004 says remittance of all money collected on redeemed tax certificates shall be made to the Comptroller, both laws can be effectively executed if the Clerk will make his remittance to the Comptroller of all amounts as required by Section 1004 of the Compiled General Laws, and the Comptroller can then pay over to the State Treasurer as County Treasurer ex officio that part of the remittance which is represented by the payment of delinquent taxes collected for the principal and interest of bonds issued by any County of the State of Florida or special road and bridge district, as required by Section 6 of Senate Bill No. 72, (Chapter 572).

The Supreme Court has held that statutes apparently in conflict with each other should be construed in such manner that both can operate together to accomplish the main purpose of the law, and under the construction I have given above, both Senate Bill No. 72 and Section 1004 can be effectively carried out in accordance with the legislative intent.

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAX, AUTOMOBILE—IF ARMY OR NAVY OFFICERS OR
ENLISTED MEN ARE SUBJECT TO, ETC.

September 16, 1929.

Dear Sir:

This will acknowledge receipt of your letter of August 23rd, in which you ask my opinion as to whether or not an army or navy officer or enlisted man stationed under orders on a Government reservation and living on such reservation is subject to the payment of personal property tax on automobile as levied by the State of Florida, and also whether or not an army or navy officer or enlisted man stationed under orders at a United States Government reservation, but maintaining his home outside of the reservation is subject to the payment of a personal property tax as levied by the State of Florida.

I am of the opinion that automobiles belonging to officers and enlisted men of the United States Government who are stationed in Florida under orders and who are occupying Government quarters and housing their cars in garages built on a Government reservation do not become subject to the civil duties and obligations of residents of the State of Florida, and therefore are not legally subject to the payment of personal property tax on automobiles owned by them and housed on the Government reservation, and, indeed, it would be beyond the power of the State of Florida, in my opinion, to attempt to pass a law which would endeavor to enforce the payment of a personal property tax under such circumstances. See *Mayre vs. B. & O. R. R. Co.*, 127 U. S. 117.

In the case just mentioned, the property is entirely beyond the jurisdiction of the State to tax, even if it wanted to do so. The question then arises as to whether or not an automobile owned by an officer or enlisted man of the United States Army or Navy, stationed in Florida under orders, but which is not kept on a Government reservation, is subject to a personal property tax under the laws of this State. Undoubtedly the State of Florida would have the legal right to pass an express statute subjecting automobiles not housed on property of the United

States Government and which have an actual situs within the jurisdiction of the State of Florida to taxation in the State of Florida, but the present statutes of Florida do not go this far.

Section 893 of the Compiled General Laws provides that all personal property belonging to persons "residing" in this State not expressly exempted therefrom, shall be subject to taxation in the manner provided by law. In my opinion, an automobile which is owned by an officer or enlisted man of the army or navy who is stationed within the State of Florida under orders, whether such officer or enlisted man resides on or off a Government reservation, or whether he keeps his automobile housed on a Government reservation or houses elsewhere in the State, is not subject to a personal property tax under the present statutes of Florida, because such officer or enlisted man of the army or navy, stationed in Florida under orders is not a person "residing in this State" within the purview of Section 893 of the Compiled General Laws, which subjects personal property to taxation. Officers and enlisted men of the United States army or navy, when stationed under orders, do not acquire civil and political privileges in a state where they are stationed; they are subject to being moved from place to place on a moment's notice, and it appears to me that a sound construction of the statutes excludes the idea that such officers and enlisted men were intended to be covered by the phrase used in Section 893 of the Compiled General Laws, which only subjects to taxation in Florida "personal property belonging to persons residing in this state."

My interpretation of this language is that an officer or enlisted man stationed in this State under orders, who does not acquire and who has not attempted to exercise any of the civil or political rights of the State, and who is subject to removal under orders at any time, is not a person "residing" within the State in the sense that this term is used in the above statute. My opinion is based upon a question of statutory construction of existing law, rather than a denial of the power of the State to pass a law which would in terms extend further than the present statutes. In construing the statute in question I can see no distinction between the status and privilege of an officer or an enlisted man of the United States army or navy who is stationed in Florida under orders merely because such officer or enlisted man lives outside of a Government reservation or houses his car in a private garage. Whether living on or off a Government reservation such officer or enlisted man is still engaged in the performance of the same identical governmental service, and should be entitled to the same privileges and immunities.

Chapter 14574, Acts of 1929, does not undertake to require the payment of personal property tax on an automobile as a condition precedent to obtaining a license tag, but merely undertakes to say that if the automobile is liable for a personal property tax, that the tax for which the car is liable must be paid before the tag is issued; it follows that an officer or enlisted man of the United States army or navy, stationed in Florida under orders, is entitled to obtain a Florida tag without the payment

of a personal property tax on the car, to which such officer or enlisted man is not subject under existing statutes.

Trusting this answers your inquiry, I am

Yours very truly

FRED H. DAVIS, Attorney General.

LICENSE TAX—PEDDLERS—WHEN REQUIRED TO PAY

September 23, 1929.

Dear Sir:

This will acknowledge receipt of your letter of August 30th, transmitting to me letter you have received from Attorneys Martin and Hocker of Ocala, in which they contend that persons, firms or corporations, having no permanent place of business in Marion county, but who send trucks into that county and sell bread therein, usually from the trucks are subject to a peddler's license tax, as provided by Section 1222, Compiled General Laws, (950, Revised General Statutes.)

The Supreme Court of the United States in the case of Wagner vs. City of Covington, 251, U. S. 95, held that persons who habitually cause goods to be carried on vehicles from the state of manufacture to various establishments of retail dealers who are his customers in an adjoining state, and there sell and deliver such goods to such dealers in the original packages in such quantities as they may desire to purchase at the time of these visits, are engaged in the business of an itinerant vender or peddler, and may be taxed as such in the State where the goods are sold.

I am therefore of the opinion that persons, firms and corporations who habitually cause bread to be carried on vehicles either from outside the State or from outside the county of manufacture to various establishments or retail dealers who are their customers in a different state or adjoining county, and who there sell and deliver to such dealers such bread in such quantities as the local dealers desire to purchase at the time of such visits, are subject to a tax provided by Section 1222, Compiled General Laws of Florida, fixing a tax of \$150.00 on peddlers in each county. Such persons may be subject to the tax provided for by Chapter 14528, Acts of 1929, under certain state of facts.

Yours very truly

FRED H. DAVIS, Attorney General.

ALLEGED PREFERENTIAL CLAIM OF

October 2, 1929.

Dear Sir:

Referring to your letter of September 17th, asking for my opinion on the above matter, I beg to advise that if the City of Deland and the County of Volusia had interest coupons maturing on outstanding bond issues and, shortly prior to the maturity date the City of DeLand and the County of Volusia drew checks against funds on deposit in Volusia County Bank & Trust Company to the credit of the City and the County and delivered these checks or vouchers to the Bank for the purpose of paying these interest coupons maturing and such checks were accepted by the Volusia County Bank & Trust Company before such Company went into the hands of a Receiver, under an arrangement whereby the coupons pre-

sented at the Volusia County Bank & Trust Company would be paid from the funds it had in hand and the Volusia County Bank & Trust Company closed before meeting these interest coupons for paying out funds thus placed with it by the County and the City, that under such circumstances the County and City have a preferred claim against the Volusia County Bank & Trust Company on the theory that such transaction changed the deposit of monies in the Bank from a mere deposit to a Trust Fund for the benefit of the City and the holders of the coupons, which were to be presented for payment by the Bank out of such special fund.

Trusting this answers your inquiry, I am

Yours very truly

FRED H. DAVIS, Attorney General.

LICENSE TAX REQUIRED OF TOWEL SUPPLY FIRMS

October 10, 1929.

Dear Sir:

Answering your letter of October 8th, in which you request my opinion as to what license tax, if any, is applicable to a business owning a supply of towels, etc., which contracts with various business offices to keep such offices supplied with towels, soap, for an agreed rate per month.

In my opinion, such firms should be licensed as laundries under Section 1116, Compiled General Laws, because the service rendered is in effect a laundry service and the persons owning and supplying the towels are in reality operating a steam laundry, which they are using for the purpose of furnishing laundry service to their subscribers. The fact that the same concern, which owns and operates the laundry for the towels, also owns the towels which are furnished for a certain consideration per month, does not alter the fact that such concern is still a laundry and operated as such.

Trusting this answers the letter of Mr. O'Bannon, I am

Yours very truly

FRED H. DAVIS, Attorney General.

LICENSE TAXES REQUIRED TO BE PAID BY UNDERTAKERS AND EMBALMERS

October 10, 1929.

Dear Sir:

Section 1262, Compiled General Laws, 989 Revised General Statutes, providing for a license tax on undertakers, who are not embalmers and upon undertakers, who are embalmers, was not repealed by paragraph (i) Section 15, Chapter 14491, Acts of 1929, which provides a special license tax upon each professional man in this state. The Tax Collector should collect both licenses from undertakers, who are professional embalmers.

The license tax provided for by Section 1261 is a license tax for the place of business or establishment of the undertaker and embalmer, while the license provided for by paragraph (i) Section 15, Chapter 14491, is a special license tax, which is required to be paid by each licensed embalmer as his personal license for the privilege of practicing his profession. For example, an undertaker and embalmer in Jacksonville, who has an undertaking shop in this city would be required to pay a State license tax

of \$100.00, and a county license tax of \$50.00 on his place of business, and if he had three or four licensed embalmers employed to work in such establishment, each of said licensed embalmers and undertakers would have to take out a personal State license tax of \$10.00 and a county license tax of \$5.00 under paragraph (i) of Section 15 above referred to. In other words, one license is on the man, and the other is on the business.

Yours very truly

FRED H. DAVIS, Attorney General.

**SHERIFF—RIGHT TO CLAIM MILEAGE AND FEES FOR SERVICES
RENDERED IN CONNECTION WITH ENFORCEMENT GAME LAWS.**

October 10, 1929.

Dear Sir:

Fees and mileage in a criminal case can only be collected one time and by one officer for the same service, even though two officers jointly make the same arrest or assist in making it. Where sheriff or deputy sheriff is requested to go with the deputy game and fish commissioner and assist him in his duties in making arrests and, arrests are actually made, the sheriff is not entitled to any fees or mileage for any service for which compensation is claimed and paid for to the deputy game and fish commissioner. In cases like this the sheriff may get the mileage and fees, provided the same is not claimed by and paid to the deputy game and fish commissioner, but both of them cannot be paid for the same service.

Yours very truly

FRED H. DAVIS, Attorney General.

**LICENSE TAXES ON APARTMENT HOUSES UNDER PARAGRAPH (d)
SECTION 6, CHAPTER 14491.**

October 15, 1929.

Dear Sir:

Paragraph (d) Section 6, Chapter 14491, Acts of 1929, provides for a license tax of 50c for each room and 25c for each bathroom in apartment houses furnished and rented to transient guests where two or more rooms are rented. This Section also contains the following proviso or exception, to-wit:

"The words 'apartment houses' in this sub-section shall not apply to rooms rented out by the owner, who also occupies the building containing such rooms as his actual home or residence, nor shall this sub-section apply to apartment houses containing less than three rooms."

In your letter of October 8th you ask me to construe the effects of this proviso, where it appears that a person has a regularly built apartment house containing from eight to twelve separate and distinct apartments, one of which is occupied by the owner of the premises as his actual home or residence or dwelling.

Prima facie, it would seem that a license tax cannot be collected for apartments in any building in which the owner has his actual residence, but a careful reading of the Section in question will show otherwise. The language of the statute is that the "owner" must also occupy the "build-

ing" as his actual home or residence, and it is only the "building" which is found to "contain such rooms" and which is also the "home" of the owner, which is exempt under this section.

To state the case in another way, it would appear that the intention of the statute is to exempt rooms in the owner's homestead from the license tax, when rented out regardless of how many rooms are so rented in such homestead. It is therefore necessary to determine whether or not the entire building is to be considered as a homestead, when it appears that such building has been specifically designed as an apartment house containing several apartments, merely because one such apartment is occupied by the owner as a home.

Some years ago a man in the City of Tampa built a large building containing several stories, and claimed the entire building as his homestead because he occupied a portion of it as his residence. The Supreme Court refused to allow this contention and said that it appeared from the actual use of the property that a portion of the building was not occupied by the owner as his residence in contemplation of law, and therefore was not a part of the homestead. See *Smith vs. Guckenheimer & Son*, 42 Fla. 1.

On the same principle it appears to me that where a person has a building constructed and specially designed as an apartment house consisting of four or five or more separate apartments all designed to be rented separately and which by reason of such construction and contemplated rental are not under the control of or subject to use in connection with one of the apartments which is occupied by the owner of the building as his residence, that such an apartment house does not fall within the exception found in paragraph (d) of Section 6 above referred to, and is subject to the apartment house tax. It will be specifically noted in this connection that the exemption is only for "rooms," not apartments, rented out by the owner who also occupies the building containing the same as his residence.

Yours very truly

FRED H. DAVIS, Attorney General.

STATE OFFICERS—CONSTRUCTION OF CHAPTER 13810 IN RE
PURCHASE OF MOTOR VEHICLES.

November 16, 1929.

Dear Sir:

Complying with the request heretofore made by the Commissioners of State Institutions that I give my opinion to your office with reference to Chapter 13810, relating to the purchase of motor vehicles by State officers and prohibiting such purchase where no specific appropriation has been made authorizing the same, I beg to advise that after careful study of the statute, I am of the opinion that the same has no application to the Board of Commissioners of State Institutions, which is a Constitutional body authorized to deal with State institutions and to make general purchases upon their behalf. The statute makes it unlawful for any State officer or employee to purchase or contract for the purchase of any motor vehicle for the use of himself or another to be paid for out of funds of the State of Florida or any Department thereof, unless a specified appro-

priation directly and expressly authorizing purchase of said vehicle has been made. The Constitution of the State provides for a Board of Commissioners of State Institutions to have supervision of all matters connected with such institutions. See Section 17 of Article IV of the Constitution.

This "Board" mentioned in the Constitution is not by itself within the purview of the statutory language of Chapter 13810, which mentions "State officer or employee" and "any Department" of the State." The use of the word "Board" in the statute in question seems to have been scrupulously omitted and in view of the fact that the Constitution provides for such Board, it appears to me that the statute should not be construed as applying to it in view of the language of doubtful import to have this effect, which is found in Chapter 13810.

I, therefore, give it as my opinion that the Board of Commissioners of State Institutions has the right under the general powers and appropriation made to it to purchase and contract for the purchase of a motor bus to be used in connection with the operation of any of the State institutions under the jurisdiction of the Board of Commissioners of State Institutions, even though no specific appropriation authorizing the particular purchase in question has been directly made. If the money is available under general appropriations, this is sufficient.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

GASOLINE TAX—COLLECTION UNDER CHAPTER 13756.

November 16, 1929.

Dear Sir:

I note your inquiry of November 6th, in connection with which was referred to me a letter received from W. J. Williams, Gasoline Tax Auditor, concerning gasoline stations at Pensacola, which are undertaking to dispense gasoline from underground storage tanks, direct to consumers, and concerning which it is difficult to get reports of the exact amount of gasoline sold.

Chapter 13756 provides for a tax upon gasoline stored in this State for a period of twenty-four hours or more, when the said gasoline is intended to be used in this State. And you have the option of collecting the tax under Chapter 13756 where the tax has not already been reported and paid under the gasoline sales tax laws. However, where the dealer undertakes to report the amount of gasoline sold by him and pay the tax under Chapter 9120, Acts of 1923, the tax cannot be charged for and collected under Chapter 13756.

Your office has ample authority to make such investigation concerning the amount of gasoline stored and sold by the dealers in question, as will enable you to make a true collection of the taxes due.

I return herewith the letter and correspondence of Mr. Williams.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX RETURNS COMPULSORY—WHAT CONSTITUTES 50 PERCENT OF FULL CASH VALUE OF PROPERTY.

December 6, 1929.

Dear Sir:

Chapter 14571, Acts of 1929, relating to the making of compulsory tax returns, requires the tax payer to state in his return "50 percent of the full cash value" of the property. I have been asked for a definition of the term "50 percent of the cash value" as used in this statute.

In my opinion, "50 percent of the cash value" as used in this statute means 50 percent of the value of the property as fixed by the tax assessor for the purpose of assessing his taxes on a 50 percent basis as has been the practice in this State for many years. In other words, the new law makes no change whatsoever in the pre-existing practice of valuing property for taxation, but merely recognizes the pre-existing practice by providing that the tax payer shall return his property on a basis of 50 percent of the full cash value, which means that the tax payer should give in his property at the valuation which he thinks it should be assessed for on the tax books. The tax assessor is not bound to accept the valuation given by the tax payer, but may either raise or lower the same for the purpose of equalizing his tax roll. See *King vs. Gwynn*, 14 Florida 32.

The Supreme Court has held that uniformity and equality of taxation is the desired end to be attained, and even where the law requires property to be assessed at its full cash value, and it is not assessed at its full cash value, but is only assessed at 50 percent of its full cash value, that the departure from the letter of the law does not render the tax invalid, provided uniformity and equality on a 50 percent basis is maintained throughout the tax roll.

Yours very truly,

FRED H. DAVIS, Attorney General.

SECURITIES—METHOD OF HANDLING BY STATE TREASURER

December 9, 1929.

Dear Sir:

Section 6131, Compiled General Laws, which is Section 4188, Revised General Statutes, provides that trust companies shall deposit with the State Treasurer a sum equal to 25 percent of its paid in capital stock, such deposit in no event to be less than \$25,000, and to be in the form of stocks, bonds, or other securities approved by the Treasurer, Attorney General and Comptroller.

The Statute specifically provides that after these securities are deposited, "said securities shall be subject to the payment of any judgment or decree which may be rendered against said company."

In my opinion the State Treasurer should continue to hold the securities in question to be applied upon any judgment or decree obtained against the trust company, or until the affairs of the trust company have been satisfactorily adjusted or settled with those having claims against it. If there are no judgments or decrees against the trust company, but there are unsatisfied trust claims, and the company desires to secure the release of these securities in order to settle such

claims, the method of procedure I would suggest would be for the claimants against the trust company to sign release of their claims against the company so that they might be filed with the State Treasurer, whereupon he could turn over the securities in order to carry out the settlements.

I do not think that any of the securities held by the State Treasurer under the above Section of the law should be paid out or delivered, except pursuant to judgments or decrees providing the same or pursuant to some settlement of the trust estates on a voluntary basis. A situation might develop in which the securities might not be enough to satisfy all claims, and in such a situation the decree of the court would be required to decide who should have preference.

Accordingly, the Treasurer should retain the securities until all the trust matters are settled up either by adjustments with all of the beneficiaries, or by decree of the court which will settle the order of distribution.

Trusting this answers your letter of December 4th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**LICENSE TAXES—MERCHANTS—WHEN FILLING STATIONS ARE
SUBJECT TO**

December 27, 1929.

Dear Sir:

Complying with your request of November 25th, for my opinion in the premises, I beg to advise that where local filling stations sell oil, kerosene, accessories, and parts for motor vehicles, and other merchandise in addition to gasoline, such local filling stations are subject to a merchants tax in addition to the tax which they pay as gasoline dealers.

The license tax collected by law on the business of selling gasoline does not extend to and cover the selling of general merchandise at filling stations. This requires the separate taking out of the regular license as a merchant for such mercantile business.

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAX CERTIFICATES—RIGHT OF REDEMPTION WHEN SOLD ON
COMPETITIVE BIDS UNDER CHAPTER 14752.**

December 27, 1929.

Dear Sir:

Section 42, Chapter 14572, Acts of 1929, providing for the sale of tax certificates held by the State after January 1st, 1930, pursuant to competitive bids for the purchase of said certificates as provided in that section merely contemplates the transfer of the State's title to the purchaser of tax certificates when they are sold pursuant to that section and does not in any way take away the right of the land owner to redeem his property as guaranteed to him under other provisions of the law. The land owner will still have his two years period of redemption, if such period has not already expired and will have the right of redemption beyond such two-year period up until the time a tax deed is issued or a

master's deed is ordered by the Court under the provisions of the Act providing for foreclosures.

Even where the taxes are foreclosed by action of the Court, the Court will fix a certain time within which payment can be made by the tax payer before the land owner loses his right of redemption.

The provisions of the 1929 Law are merely to transfer the title to the tax certificates now held by the State to private purchasers if they can be induced to buy them at a discount as an investment.

Trusting this answers your letter of December 20, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TAXES—DEFUNCT BANK LIABLE.

January 7, 1930.

Dear Sir:

I have carefully read your letter of January 4th, with attached letter of January 2nd, directed by Carl Lien, Receiver, First National Bank, Sebring, Florida, to you with reference to his controversy with Hon. D. F. Canfield, Tax Collector, in regard to the payment of taxes on the property of the First National Bank of Sebring, for the year 1928, on Lot 3, Block 61, known as the Bank Building of said First National Bank of Sebring.

In my opinion, the position taken by the Tax Collector in the controversy referred to is correct. The acceptance of the check given to the Tax Collector in payment of the taxes without the issuance of a tax receipt to the Bank in consideration of such check, which later proved to be worthless because of the insolvency of the bank did not constitute a legal payment of the tax assessment against the bank and my advice would be to resist to the extent of litigation, if necessary, the contentions of the Receiver to the contrary.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX ASSESSOR—IF ENTITLED TO COMMISSION ON LANDS ASSESSED TO STATE UNDER STATE TAX CERTIFICATE

January 13, 1930.

Dear Sir:

Section 1028, Compiled General Laws, provides that the county assessor of taxes shall be entitled to receive certain stated commissions upon the amount of taxes general or special assessed in his county. This Statute also provides that the county assessor of taxes shall receive such commissions for assessing the county tax upon such roll.

Section 984, Compiled General Laws, provides that tax assessors in making up their assessment rolls shall place thereon the lands certified to them by the State Comptroller as having been sold to the State for taxes, "and shall enter their valuations of the same on the rolls," and shall mark against such lands on their said rolls the words state tax certificate. This Section further provides that while the amount of taxes on said lands shall not be extended on the roll, that nevertheless when said lands are redeemed from the tax certificate or certificates under which they

were sold, the person redeeming shall also pay the taxes for the years in which the said lands are marked as aforesaid, at the rate of taxation levied thereon in those years respectively.

This office has several times expressed the opinion that lands sold to the State for taxes and under State tax certificates were nevertheless subject to assessment and required to be assessed under Section 984, Compiled General Laws.

The Statutes contemplate that the tax assessors shall value every parcel of land in the county each year which is subject to taxation, regardless of whether or not the same is under a tax certificate. This requirement of making a valuation of the land is a duty placed upon tax assessors as a part of their duty of making assessment, and in fact is specifically required by Section 984, Compiled General Laws, above referred to.

Undoubtedly, in performing the functions contemplated by the foregoing provisions of the Statutes, the tax assessor is assessing taxes and is entitled to receive his commissions for assessing such taxes, and making the valuations on State certificate lands as required by Section 984, Compiled General Laws, the same as all other lands assessed by him. But the existing laws of the State provide for the payment of the tax assessors' commissions upon the amount of "taxes," general or special, assessed, whereas Section 984, Compiled General Laws, provides that the amount of "taxes" on state certificate lands shall not be extended on the roll, thereby making it impossible to determine the amount to which a tax assessor would be entitled for assessing such "taxes."

Owing to the situation above stated, it would be impractical, if not without authority of law, for either the Comptroller under Section 1030, or the Board of County Commissioners under Section 1031, to compute payments to assessors for commissions for assessing tax certificate lands, and it is doubtful whether such Sections in themselves contain authority for making the payments of commissions on such lands.

It therefore appears to me that the situation presents a case where further legislation will have to be enacted before the claim of tax assessors for commissions for assessing State land can be paid.

Yours very truly,

FRED H. DAVIS, Attorney General.

DEFUNCT BANKS—METHOD OF HANDLING PREFERRED CLAIMS AGAINST.

January 20, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 17th on the above subject, in which you advise me that a number of claims have been filed against various receivers of closed banks, prior to November 1929, on which the claimants had either not asked for preferential classification, or had asked for such and been denied.

This class of claims has to do with items coming through correspondent banks in "cash letters."

The case of *Edwards vs. Lewis*, 124, So. 746 held that when a person or bank transmits through a bank for collection and remittance commercial

paper owned by the former, the bank of deposit holds such papers as agent in trust for the owner, and when the collections are made the sums so collected are impressed with a trust in favor of the owner.

In my opinion it is the duty of a claimant, who undertakes to assert that he has a preference in the payment of his claim against the defunct bank, to assert such preference within the time limited by the Statute for presenting claims, and to point out to the receiver or Comptroller, as the case may be, the fact that he claims a preference in regard to his claim and the basis upon which his preference is claimed, or he should institute a proper suit to have the preference adjudicated. If he fails to either present his claim as a preferred claim within the time limited by the Statute for presenting claims, the presumption would be that his claim was an ordinary claim and entitled to be paid as such. I would accordingly suggest that the Receiver treat all claims filed with him as common claims, unless it is affirmatively made to appear by the claimants that they assert a preferred claim to be allowed as such.

A preference, if one exists, like any other legal right, can be waived by failure to assert it at a proper time or in a proper manner. Insofar as those claims are concerned which were presented as preferred claims and which fall under the rule of the above cited Supreme Court opinion, but which have heretofore been denied as being preferred claims, my opinion is that such claims should be now considered as preferred claims properly presented and entitled to be paid as such.

As to those claims which could probably have been claimed as preferred claims under the Supreme Court decision above referred to, but which have not been asserted as preferred claims prior to this time, and as to which the statute of limitations has run for the refiling of the same, as preferred claim, I would advise that such claims be disposed of as common claims not entitled to preference.

There is some doubt as to whether or not the statute of limitations bars a claim for preference based upon a trust relationship such as that dealt with in the above cited holding of the Supreme Court, but until the Supreme Court rules otherwise, my advice would be that such statute be considered as applicable.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAX CERTIFICATE—WHEN PERSON AUTHORIZED TO PURCHASE
UNDER CHAPTER 14572.**

January 15, 1930.

Dear Sir:

Chapter 14572, contemplates the adjustment of taxes for the benefit of the property owner and also for the benefit of any lienors, and permits the purchase of tax certificates by any interested party, as well as the redemption of the same.

Especially after January 1st, 1930, which is already passed, it seems to me that the Statute contemplates that a person holding a mortgage on property, the taxes on which have been adjusted by the local adjustment board, has the right to purchase the adjusted certificate at the end of ten

days from the date of the adjustment, paying therefor the adjusted amount. Then, at any time thereafter up until and including June 30th, 1930, the land owner would have the right to redeem such adjusted certificate in the hands of the purchaser by paying the adjusted amount plus two percent interest per month, as provided in Section 38 of the Act. If the land owner does not redeem the certificate after the adjusted amount in the hands of the purchaser within the time limited by Section 38, the adjusted certificate later acquires its full par value and the purchaser would have the right to hold the certificate as security in addition to his mortgage lien. The same would apply in the case of a judgment or other creditor who had some claim against the land which made it advisable for him to acquire the tax certificate against the land, in order to prevent the land being taken away from him under a superior lien.

It was to accomplish this purpose that the word "purchase" was inserted into the law by way of amendment of the bill in the Legislature, as it was realized that in many cases the mortgagee would hesitate to redeem property for the benefit of the mortgagor, but would be willing to acquire an outstanding tax certificate in order to preserve his mortgage rights.

Trusting this answers your inquiry made to you by Hon. Frank Brown, Clerk Circuit Court of Duval County, whose letter is returned herewith. I am

Yours very truly,

FRED H. DAVIS, Attorney General.

DRAINAGE TAXES—TAX PAYER ENTITLED TO CERTAIN DISCOUNT

January 20, 1930.

Dear Sir:

For the purpose of this opinion it is assumed that the drainage taxes in question are those provided for under the general drainage law, Sections 1451 to 1522 inclusive. From a consideration of Sections 1467, 1468, 1469 and other pertinent provisions of the general drainage law, I am of the opinion that the same rules which are applicable to the payment of state and county taxes are applicable to the payment of drainage taxes assessed under the general drainage law. And that where payment is made during the months of November, December, January and February under such circumstances as to entitle the tax payer to a discount if paid before a certain time, such discount is applicable to drainage taxes assessed under the general drainage law above referred to, as set forth in Section 950, Compiled General Laws, as amended by Chapter 14572.

It appears to be the legislative intent to encourage the prompt payment of taxes in the early part of the tax paying period by giving liberal discounts for such payments made before the taxes become delinquent. The general scheme of levying and collecting the drainage taxes imposed under the general drainage law indicates that it was the intention that such taxes should be collected at the same time and under the same conditions that state and county taxes are collected, which in my judgment means that discounts allowed in the payment of state and county taxes

should also be allowed on the payment of drainage district taxes imposed under the general drainage law.

As to drainage taxes imposed under special acts of the Legislature or in the Everglades Drainage District, I express no opinion at this time; as your inquiry does not extend to that subject, except insofar as it may be controlled by the provisions of the general drainage law.

I return herewith the communication received by you from Hon. Randall Wells, Tax Collector of Putnam County, on this subject.

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAX EXEMPTION—CERTAIN PROPERTY SUBJECT TO WHEN
USED FOR EDUCATIONAL PURPOSES**

January 25, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 13th on the above subject.

The Constitution of Florida provides that the Legislature *may* exempt property from taxation when used for educational purposes. This means that the character and extent of exemption which is allowable under the Statute is exclusively within the province of the Legislature, and if none is allowed by the Legislature, none can be granted.

Therefore, we must have recourse to Section 997, Compiled General Laws of Florida, which specifically defines how, when and where a tax exemption for educational purposes can be allowed. This Section has been construed by the Supreme Court very recently in the case of *Rast, tax collector, vs. Hulvey*, 77 Fla. 74, which involved a military academy at Jacksonville. In that case the Supreme Court pointed out the law as follows:

"The right to taxation is essential to the existence of government, and all property of every description is subject to taxation, unless it has been specifically exempted; and all laws exempting property should receive a strict construction, and nothing will be held to be within the exemption which does not clearly appear so to be." (See 77 Fla. Text page 85.)

Paragraph 3 of Section 897, Compiled General Laws, provides that such property of educational institutions within this State "as shall be actually occupied and used by them solely for the purpose for which they have been or may be organized" is exempt from taxation.

Section 893, Compiled General Laws, provides that all real and personal property is subject to taxation, unless "expressly exempted therefrom."

In the case of *City of Jacksonville vs. Masseys Business College*, 47 Fla. 339, the lower Court held that the property of Massey Business College was exempt from taxation, and while the Supreme Court reversed this holding, it did so on other grounds than the question of tax liability. It therefore appears that the tax exemption allowed to educational institutions when applicable at all, have been judicially construed at least

by one of the Circuit Courts as applying to personal property, as well as real property.

In my opinion, if the Miami Military Academy, located at Coral Gables, Miami, Florida, is a property organized or incorporated educational institution in the State of Florida, then all of its real property as is "actually occupied and used" solely for educational purposes is exempt from taxation under Section 897, paragraph 3. Also all personal property of such institution will be likewise exempt, where it is used "solely" for educational purposes in connection with the operation of the institution.

The County Commissioners and Tax Assessor should make a survey of the premises in question to determine what part of the premises and personal property is used solely for educational purposes and should allow the appropriate exemption upon that part only.

In this connection I would call attention to the fact that it has come to my attention recently that in several instances owners of tracts of land have either deeded or leased their properties to some adjoining church or religious or educational society for the purpose of having it exempted from taxation, during the time that they held the same for speculative purposes awaiting a rise in value, whereupon they expected to obtain such property back upon some kind of a contract or purchase agreement had with the institution for so doing. Such practices wherever they are found to exist are a plain fraud upon the law, and should not be tolerated. Churches, educational institutions and other organizations entitled to tax exemption are not entitled to such exemption upon "any property held by them as an investment or for speculation." And in every instance where an exemption is claimed the tax assessor and County Commissioners should make a careful investigation to ascertain whether or not there is an excess amount of land or personal property being claimed as exempt, than is actually used and required to be used for the purposes of the institution claiming the exemption.

So far as the tax sale is concerned for 1929, it appears to me that the best way for the Miami Military Academy to get rid of its liability under this sale is to handle the matter through the County Delinquent Tax Adjustment Board, and my opinion is that the fact that it let the property be sold for taxes without claiming the exemption or enjoining the sale operates as a waiver of the exemption for that year.

I return herewith the correspondence submitted with your letter.

Very truly yours,

FRED H. DAVIS, Attorney General.

ITINERANT MERCHANTS—LAW CONSTRUED, IN RE LICENSE TAX.

February 19, 1930.

Dear Sir:

Your letter of January 29th on the above subject has just come to my attention.

Chapter 14536, Acts of 1929, imposes a special license tax upon the business conducted by itinerant merchants in the State of Florida. As an incident to the imposition and collection of the special license taxes

imposed, the Act undertakes to define what an itinerant merchant shall be construed to be. The Act was passed under the power of the Legislature to make a classification based upon the distinction between permanent and transitory merchants in the conduct of their business, as a means of exercising the police power as well as the taxing power of the State.

Central Lumber Co. vs. So. Dakota, 228 U. S. 157. Mogul vs. Caither, 121 Am. Rep. 32 ex parte West, 243 Pac 55. Park vs. Morgan, 64 Fla 414.

The Act must be construed in such manner as to make it reasonable but not arbitrary. The Statute defines an itinerant merchant as any person who engages in this State in a seasonal business during certain seasons of the year only of selling or offering for sale goods or merchandise, but shall not apply to merchants having a permanent place of business in this State throughout the year, who engage in business therein only for a portion of the year.

The basis for the classification made by the Legislature in the imposition of the higher rate of tax upon the itinerant merchant as compared with the ordinary merchant, is that the itinerant merchant being a seasonal dealer and having no permanent place of business in the State will require a greater degree of regulation in the conduct of his business than will the merchant who has a permanent place of business. The Legislature, no doubt, took cognizance of the fact that a seasonal dealer, having no fixed place of business and consequently no particular good will to preserve by way of fair dealing with the public, so as to induce trade to come again to his place of business, would be more likely to resort to less conscientious practices, and dispose of inferior goods, than would be the established merchant who maintained a permanent place of business in the State and who by reason thereof would necessarily have to build up and maintain a certain degree of good will in connection with his establishment.

In the recent case of Dusenbery vs. Chesney, 121 So 567, the Supreme Court of Florida, while recognizing that classifications may be made which distinguish between permanent and transitory merchants because of substantial differences in their methods of doing business, and in their relationship to the business, holds that such discriminations must not be arbitrary or unreasonable. In that case the Court declared unconstitutional an ordinance of the City of St. Petersburg, which undertook under the pretext of a license tax, to unreasonably discriminate against persons who did not continuously engage in business in that city.

In my opinion, Chapter 14528, Acts of 1929, in view of the holdings of the Supreme Court of Florida in similar cases, as well as the holdings of other Courts with regard to like legislation, cannot be legally applied to a merchant who has a permanent place of business rented in this State throughout the year, in which he keeps his stock during the year, merely because he closes his store for two or three months in the summer time, during which period he transacts no business whatever. The law must apply and can only apply to that class of merchants who open up a store in a certain locality, operate the same for several months, and then close up their stores taking their stocks with them to some

new location. The term "itinerant" as used in the law is itself expressive of the idea intended to be conveyed by it, which means a merchant moving about from place to place.

The question of whether or not a particular merchant is an itinerant merchant under a particular state of facts is a question of fact which must in each case be determined by the enforcement officers. If a merchant opens up a store in a particular place for a few months in the year, fills it up with a stock of goods and then closes it up, moving his store to some other location, he might be properly considered to be an itinerant merchant, even though he had a yearly lease on the premises; because, the Statute contemplates that all merchants who have no *permanent* place of business in the State throughout the year are itinerant merchants.

There is a distinction between a merchant who keeps his stock in a particular location for twelve months in the year, but who only keeps his store open for a part of the twelve months, and the merchant who moves his store out and carries it to another location during the period in which the store is closed. The one who moves his store from one place to another is an itinerant merchant, while the one who keeps his stock in a year round location is not an itinerant merchant, even though he may not operate his business a portion of the year. The fact that the location or store may be leased by the year is not necessarily conclusive one way or the other. It is possible for a merchant to be both an ordinary merchant and an itinerant merchant at the same time.

For example, a merchant may have a store permanently located at Pensacola, which he operates the year round, but this would not authorize him to come to Tallahassee and open up a store during a session of the Legislature, and then close it at the end of the session, taking the goods away with him, without thereby becoming an itinerant merchant with reference to his Tallahassee store.

The question of whether or not the operation of stands where cigars, cigarettes, chewing gum and other articles are sold in a hotel, will constitute the business of an itinerant merchant depends to a large extent upon the circumstances under which the business of that kind is operated. A person who leases space from the hotel for the conduct of the business of selling or offering for sale goods, wares or merchandise during a certain season of the year only, and who brings his stock to the place leased for the conduct of a seasonal business during certain seasons of the year, thereafter leaving that place of business and taking his stock with him, would nevertheless be an itinerant merchant, as much so as if he were not operating his business in connection with the hotel.

On the other hand, the hotel itself might operate a stand as a part of its hotel facilities, during the season in which it was open for business, without necessarily becoming an itinerant merchant, so long as it confines its trade to its hotel patrons.

Trusting this explains the matter and returning herewith the letter

you have received from Hon. D. P. Smith, Tax Collector of Volusia County, I am

Very truly yours,

FRED H. DAVIS, Attorney General.

**ROAD AND BRIDGE DISTRICT TAXES—WHEN NOT SUBJECT TO
REMITTANCE TO STATE TREASURER UNDER CHAPTER 14486.**

February 20, 1930.

Dear Sir:

Section 6 of Chapter 14486, Acts of 1929, provides that all uncollected taxes levied for the payment of principal and interest of bonds issued by any county of the State of Florida or special road and bridge district shall be collected in the manner required by law, and when collected remittance shall be made by the county official receiving the same to the State Treasurer, during each month on the last day of the month with statement showing sources from which the collection was made.

It will be noted from the language of the law that it is particularly applicable to those taxes which have been levied "for the payment of principal and interest of bonds." Therefore, any road and bridge district for which taxes have been levied for the payment of principal and interest of bonds, which includes time warrants, notes and other forms of indebtedness outstanding on April 1st, 1929, is subject to the law, and such taxes when collected by the tax collector must be remitted to the State Treasurer for application under Chapter 14486.

A maintenance tax or other tax not required for the payment of principal or interest of bonds is not required to be remitted by the tax collector to the State Treasurer, but such funds remain in the hands of the local official to be administered and expended by him. See Section 21, Chapter 14486.

You are therefore advised that if the Palm City road and bridge district has no outstanding indebtedness subject to Chapter 14486, the taxes collected for that district will not be subject to remittance to the State Treasurer under the Act, but will remain in the hands of local officials to be used by them under Section 21 of the Act.

Trusting this answers your letter of the 13th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAXATION—MUNICIPAL PROPERTY EXEMPT WHEN INTENDED
FOR PUBLIC USE.**

March 3, 1930.

Dear Sir:

This will acknowledge receipt of your letter of February 25th transmitting to me the letter filed with you by Hon. Austin Miller, City Attorney, Jacksonville, in which he makes inquiry as to whether or not municipal property either used or intended for public purposes is exempt from taxation under Section 897, C. G. L. although the title thereto is not vested in the City.

In the case of *Rast vs. Hulvey*, 77 Florida 74, the Supreme Court held that all tax exemptions should be construed strictly in favor of

the State. The language of paragraph 2 of Section 897, is that all "public" property of cities, villages and towns "used or intended for public purposes" shall be exempt from taxation. A similar law was recently considered in the State of Virginia and in the case of Board of Supervisors vs. City of Norfolk, the Virginia Court of Appeals on January 16th, 1930, decided that it is the use to which property is put which determines whether it shall be exempt from taxation or not and that the purpose for which property was purchased by a city or town and the use made of such property, as well as the use contemplated to be made, was the determining factor in the case. This opinion is not yet officially reported in the advance sheets.

I am, therefore, of the opinion that "public" property used or intended for public purposes, which is in the possession of and under the control of a city or town by virtue of contract for deed, even though no deed has yet been issued for same, would be exempt from taxation under the terms of paragraph 2, Section 897, C. G. L. of Florida.

Yours very truly,

FRED H. DAVIS, Attorney General.

**LICENSE TAX—WHEN WATER COMPANIES NOT REQUIRED TO
PAY.**

March 20, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 18th requesting my opinion as to whether or not Section 1267, Compiled General Laws, providing certain license taxes on persons, firms, corporations or associations operating water companies, is to be construed as applying to the business of a plant engaged in bottling, distilled water and selling the same in bottles to customers, such as the business conducted by the Tri-Pure Water Company.

The statute defines a water company as any person, firm or corporation "furnishing water for profit." In 248 U. S. 45, the Supreme Court of the United States defined the word "furnish" as meaning "to supply." The idea conveyed is that companies "supplying" water are to bear the tax, and I think this has reference only to those companies who are conducting a private water works, piping the water to the homes of the inhabitants of a city or town.

At the time the law was passed, there were many private water companies in Florida. The Act was never intended to apply to "bottlers" of water, who put the same in bottles and sell the same as any other commodity would be sold. The proper license is that prescribed by Section 1115, which is required to be paid by bottling plants.

Yours very truly,

FRED H. DAVIS, Attorney General.

**BANKS—PREFERRED CLAIMS—PAYMENT LIMITED TO AMOUNT
CASH AT TIME BANK CLOSED.**

April 17, 1930.

Dear Sir:

This will acknowledge receipt of your letter of the 7th instant, stating

that the question has arisen in several of the receiverships of insolvent banking institutions with reference to whether the payment in full of preferred claims shall be limited by the amount of cash on hand at the time the bank closed its doors.

This question depends for determination upon the facts of each particular case. It may be stated as the general rule that when the funds of a bank become impressed with a trust such trust remains and follows such funds and may be claimed and insisted upon as far as such funds can be traced.

Our Court has held that the mingling of trust money with that of the trustee does not defeat the owner's title, because there is no way to identify the money. It is also held that such mingling of funds extends the trust to all the funds of the bank. It may be further stated that if trust funds are mingled with the funds of the bank and such co-mingled funds thereafter invested in assets or other property, the trust therefore established attached to such assets or property and if such assets or property are held by the bank at the time of its failure and passes into the hands of the receiver, the same would thereupon be liable for the payment of such preferred claims.

It may be stated, however, that assets coming into the hands of the receiver as property of the insolvent bank but not purchased with trust funds, are not impressed with a trust, and a party holding a preferred claim against the bank would not be entitled to a preference in the disbursement of the proceeds of such assets over the common creditors of the bank.

In other words, preferred creditors are entitled to payment in full of such preferred claims only to the extent of the funds of the bank which were impressed with a trust and those funds with which such trust funds were mingled, in the absence of evidence of the fact that such trust funds have been invested in other assets or property of the bank.

Yours very truly,

H. E. CARTER, Assistant Attorney General.

SCHOOLS—PREPARATION OF BUDGETS BY SCHOOL BOARDS AND SCHOOL TRUSTEES

April 21, 1930.

Dear Sir:

This will acknowledge receipt of your letter of April 18th, transmitting to me letter received by you from Hon. A. L. Taylor, Chairman Hendry County School Board, in reference to county school budgets. It seems that Mr. Taylor has been advised and is under the impression that there is no budget law governing county school boards. This is far from true.

Paragraph 13 of Section 516, Compiled General Laws, requires each and every school board on or before the last Monday in June of each year to prepare an "Itemized" estimate showing the amount of money required for the maintenance of the necessary schools of their county for the next ensuing scholastic year, together with an estimate of the amount of tax required to be levied for the school fund. This "itemized" estimate should be prepared with the same particularity as the budget is prepared by the

Board of County Commissioners of each county, and should show the estimated revenue expected to be obtained from state aid funds together with the estimated revenue to be received from and covered by the tax levy.

Insofar as expenditures are concerned, the budget so prepared should show in detail each proposed item of expenditure "itemized" with the same particularity as the county budget is itemized by the Board of County Commissioners. This is true because the budget so prepared is the authority for the making of the tax levy in the county. The same procedure should be followed by trustees of special tax school districts in compliance with Section 712, Compiled General Laws. The budget of the trustees is required to be prepared on or before the first day of July in each year, while that of the school board proper should be prepared on or before the last Monday in June.

The budget prepared by the school trustees should be "itemized" in like manner as the other budget.

It seems from Mr. Taylor's letter that he is under the impression that this budget prepared by the Board of Public Instruction is not binding. On the contrary, it is binding and its observance is mandatory on the part of the School Board, even though there is no severe criminal penalty for its violation like that imposed upon members of the county commissioners who violate their budget. It is quite clear that a willful departure from the budget by the school board would be as much a malfeasance in office and subject to penalty as would be a similar violation by the Board of County Commissioners.

The subject of preparation of proper school board budgets is especially important at this time. I now have pending in this office several suits brought by railroad companies contesting tax levied for school purposes on the ground that budgets in certain special tax school districts were not properly prepared as provided by law. The air is full of threats by other tax payers to bring further suits involving the collection of taxes.

It is therefore urgently necessary that each Board of County Commissioners and each Board of Public Instruction in the State see that budgets are properly prepared and other formalities of law forming a part of the tax system carried out, in order that any suits brought to restrain the collection of taxes may be successfully defended against attacks on technical grounds.

I would suggest that you have this letter mimeographed and sent out to all school boards in Florida as the time for preparing the school board budget is near at hand.

Yours very truly,

FRED H. DAVIS, Attorney General.

VOTERS—ONCE LAWFULLY QUALIFIED IN PARTICULAR COUNTY
DO NOT FORFEIT RIGHT TO VOTE THERE BECAUSE OF
OFFICIAL RESIDENCE ELSEWHERE.

April 26, 1930.

Dear Sir:

Paragraph 7 of Section 246 of the Compiled General Laws provides that every voter must register to vote in the precinct in which he resides,

and that he cannot legally register and vote in any other place. At the same time, where a man has one legal registration in a precinct in which he did reside at the time he so registered, but has since that time by reason of obtaining an official position with the Government or with the State been forced to remove his actual domicile to Tallahassee or elsewhere in order to enable him to perform his official duties, such circumstances entitle him to still maintain his voting place at his original home, even though his official duties compel him to reside at the State Capital or elsewhere. This point was ruled on by the Supreme Court in the case of *Dennis vs. the State*, 17 Fla. 389, where it was held that a qualified elector does not lose his political domicile by living in Washington attending to prescribed duties, his family being at the same time on a visit in Massachusetts.

Persons who by reason of their official duties, either in Washington or in Tallahassee, are compelled to live in those places do not lose their political domicile in the county from which they come.

Trusting this answers your letter of April 23rd, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

GASOLINE TAX.—WHETHER APPLICABLE TO SALES MADE IN
STATE FOR EXPORT TO FOREIGN COUNTRIES

May 8, 1930.

Dear Sir:

In the case of *Dannke-Walker Milling Company vs. Bondurant*, 66 Law Ed. 239, the Supreme Court of the United States held that where goods were purchased in one state for transportation to another, the purchase is interstate commerce quite as much as is the transportation, and that it is beyond the power of the state to regulate or burden such purchase.

The Supreme Court of Florida in the recent case of *Amos vs. Mathews*, 126 So. 123, has held that the gasoline sales tax of 6c per gallon imposed in Florida is a tax upon the seller of the gasoline and is based upon the transaction of purchase and sale. It, therefore, appears to me that gasoline purchased in Florida for immediate transportation to foreign countries, or in other words, for export, is, under the United States Supreme Court opinion above referred to, not subject to the Florida gasoline tax. To the same effect is the holding of the United States Supreme Court in the case of *Kidd vs. Pearson*, 32 Law Ed. 346, where the Court said: "Buying and selling and the transportation incidental thereto constitutes commerce." In *United States vs. E. C. Knight Company*, 39 Law Ed. 325, the United States again said: "Contracts to buy, sell or exchange goods to be transported among the several states, are a part of interstate trade or commerce."

Since the Florida taxes expressly made applicable to the transaction of sale in Florida, and since the statute itself expressly provides that it shall not be so construed as to burden interstate or foreign commerce, it appears that the statute cannot be applied to those sales which are a part of interstate or foreign commerce such as the sale of gasoline made

in Florida to a consignee for immediate transportation to a foreign country.

In the first cited case a Tennessee corporation was in the practice of going into Kentucky to purchase grain to be transported to and used in its mill in Tennessee. Contracts were made in the course of this practice, the milling company intending to forward the grain to its mill as soon as the delivery was made. The delivery was made on board the cars of a public carrier to immediately accomplish the transportation. The transportation was held to be one in interstate commerce, although the contract of purchase and sale was made in Kentucky where the grain was first acquired and was to be performed in Kentucky. The same ruling would be applicable to a transaction involving the sale of gasoline. In all cases where it is claimed that a particular sale is void of its interstate or foreign commerce character and not subject to the gasoline tax, no exemption should be allowed, unless the person claiming the exemption immediately asserts the same and offers convincing proof to substantiate his claim.

It will be noted that where the purchase of gasoline is claimed to be exempt because it is intended for export, the delivery of the gasoline must be for the purpose of immediate transportation to accomplish the export. The mere fact that a purchaser intends ultimately to ship such gasoline to a foreign country will not necessarily make the purchase and sale a part of the exempt commerce.

Very truly yours,

FRED H. DAVIS, Attorney General.

VETERANS.—TAX EXEMPTION ON PROPERTY PURCHASED WITH
GOVERNMENT PENSION BONDS TO DECEASED VETERAN—
WORLD WAR

May 19, 1930.

Dear Sir:

This will acknowledge receipt of your letter of May 17th enclosing to me letter received by your office from Hon. Cyril Baldwin, Tax Assessor, Highlands County, relating to the claim made by the regional attorney of the Veterans Bureau of Jacksonville, Florida, that real estate purchased from money paid by the Government to World war veterans or their dependents is not subject to taxation.

Sometime ago the regional attorney for the Veterans Bureau of Jacksonville appeared before me and personally urged a claim to the effect that real estate purchased with moneys paid by the United States government to a deceased World war veteran should be held to be exempt. I have given the matter some considerable study but I am unable to find any legal basis upon which such claim of exemption can be allowed.

Unquestionably, the funds which constitute the estate of a deceased World war veteran received from the United States government are exempt from taxation by the State, but I do not think such exemption can be followed into the land purchased with such funds, which is more than a mere change in the form of the estate. If such theory could be maintained then the salary of a Federal judge which is exempt from

taxation by the State would render exempt his home owned in the State of Florida which was paid for with such salary. The same would be true of postmasters and the thousands of other Federal employees who receive United States Government funds which are invested in various kinds of taxable property.

I am therefore of the opinion that the exemption cannot be allowed.

Yours very truly,

FRED H. DAVIS, Attorney General.

BONDS—PURPORTED TO HAVE BEEN ISSUED BY THE TERRITORY
OF FLORIDA—VALIDITY OF.

May 20, 1930.

Dear Sir:

This is in answer to your verbal request for my opinion regarding the above subject.

From time to time for many years past various parties have attempted to present and secure payment of certain alleged bonds which purported to have been issued by the Legislative Counsel of the Territory of Florida long prior to the time that Florida became a state. It appears that such bonds were issued under this territorial Act, but the power of the Legislative Counsel to authorize such bonds to be issued was challenged from the beginning as being within the power conferred upon the territory of Florida by any Act of Congress. In 1842 the Territorial Legislature passed an express resolution declaring that any such bonds were not legal and that the territory of Florida was not responsible for any such bonds. Any person who has purchased these bonds is necessarily charged with notice of the fact that the Legislative Counsel of Florida expressly denied liability on such bonds long before Florida became a state and is also charged with knowledge of the fact that after Florida did become a state it was charged with no duty, responsibility or liability to pay off any such illegal bonds. It may be true that the interest on some of these bonds, illegal though they were, were paid in 1870 and 1871. If such payment was made it was made during the reconstruction period following the Civil War and was made possibly in ignorance of the exact legal and legislative history of the alleged obligation.

There is nothing in the Constitution or Laws of Florida to warrant the assumption that such payment of interest has in any way ratified or validated these obligations. The State of Florida has never repudiated any honest debt and will not do so. It is not reasonable to expect, however, that the State will undertake to pay any illegal demand against itself such as the bonds mentioned in your correspondence with the New York attorneys.

I am returning herewith the file in the matter which you submitted to me.

Yours very truly,

FRED H. DAVIS, Attorney General.

OCCUPATIONAL TAXES.—RIGHT TO COLLECT ON U. S. NAVAL RESERVATIONS.

June 10, 1930.

Dear Sir:

The Supreme Court of the United States has held that where lands are purchased by the United States with the consent of the State Legislature, the jurisdiction residing in the States passes to the United States, thereby making the jurisdiction of the latter the sole jurisdiction and that this excludes the right of the State of Florida to tax property or business located on such lands, the jurisdiction over which it vests in the United States. See *Surplus Trading Company vs. Cook*, U. S. Supreme Court Advance Opinions, June 2nd, 1930.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX SALE NOTICE.—PUBLICATION—LENGTH OF TIME REQUIRED.

June 19, 1930.

Dear Sir:

Section 969, Compiled General Laws, as amended by Section 3 of Chapter 13572, Acts of 1929, provides that the tax sale notice shall be published once each week for four consecutive weeks.

The Supreme Court has held that in order to constitute a publication once each week for four consecutive weeks the date of the first publication must be at least 28 days prior to the time of the happening of the act, which is required to be preceded by the publication, which in this instance means 28 days prior to the date set for holding the tax sale. While publication only four separate times one week apart in four consecutive weeks is all that is required under the 1929 law, at the same time where the date of the first publication is less than 28 days prior to the date set for holding the tax sale, the required notice is not given and the advertisement will not be legal.

Where the first public notice is only 25 days prior to the date for holding the tax sale the publication is not sufficient." There seems to have been a practice established in Florida upholding tax sales on the first Monday in the month, probably because of the provisions of Section 4523 which fixes the time for holding sales of property under legal process as the first Monday in every month.

I am unable to locate in the tax statutes, however, any provision which limits the time for holding a tax sale to the first Monday in the month. Section 4523 apparently is limited to the holding of sales of property levied on under judicial process and not to such sales as tax sales. The tax laws merely refer to selling property on a day "designated in the notice of sale." The tax collector apparently has the right to designate any day for holding the tax sale whether it is the first Monday in the month or not.

I would suggest that in the Osceola county tax sale which appears not to have been advertised sufficiently prior to the date set for holding the sale that the notice be amended to fix some other day therefor, which

will allow four weeks of publication, the first of which is more than 28 days from the date set for the sale whether the first Monday or not.

Yours very truly,
FRED H. DAVIS, Attorney General.

BUILDING AND LOAN ASSOCIATIONS—PRIORITY OF CLAIMS.

June 24, 1930.

Dear Sir:

This is in answer to your letter of June 14th requesting my opinion on the above subject.

Section 6181, Compiled General Laws, provides that the same procedure shall be observed by the State Comptroller to the winding up and liquidation of building and loan association as would be applicable to banks under like situations. This means that the Comptroller can exercise power to take charge of a building and loan association under the same circumstances, and deal with it in the same way as a defunct bank. But otherwise Section 6181 has no effect toward changing the character nor status nor peculiar liabilities of a building and loan association as such.

In my opinion a general creditor of a building and loan association would have prior rights to collect his claim out of the assets of that association to any stockholder or shareholder in the association. In the Dade County Security Company case it was held by the Federal Court that a shareholder or stockholder in a building and loan association was not a creditor in the eyes of the law, although he might acquire rights similar to those of a creditor by pursuing the remedies fixed in the statute, for him to withdraw.

It is a general rule that creditors as such are entitled to a preference in the assets of a defunct corporation to the stockholders or members of the corporation. The authority of the building and loan association to borrow money and create debts against itself is very limited under the law, which would probably result in a very limited outstanding common creditor indebtedness on the part of a building and loan association to any creditor outside of the association itself.

Yours very truly,
FRED H. DAVIS, Attorney General.

GASOLINE TAXES.—COLLECTION OF

June 26, 1930.

Dear Sir:

This will acknowledge receipt of your letter of June 25th, with which you enclosed letter from the Pan American Petroleum Corporation, and which is returned to you herewith, regarding inquiry made by this concern with reference to responsibility of the seller of gasoline in this State for the payment of gasoline tax if the purchaser is willing to assume the tax and later should fail to report and make payment of the tax as the law directs.

In my opinion, the statute clearly makes the original dealer who handles the first sale of gasoline in this state liable for the amount of tax on same, and my suggestion would be that in all cases this liability

and responsibility be strictly enforced, as otherwise the State will lose thousands of dollars of revenue.

Yours very truly,

FRED H. DAVIS, Attorney General.

**BANK.—CLAIMS BETWEEN BANKS AS COUNTY DEPOSITORY AND
COUNTY COMMISSIONERS.**

June 26, 1930.

Dear Sir:

This is an answer to your letter of June 23rd, with which you enclosed letter from Hon. A. B. Small, County Attorney of Miami, Florida, on the above subject. Mr. Small's letter is returned to you herewith.

In the case of the American Bank & Trust Company vs. Town of Palm Beach, 117 So. page 900 the Supreme Court had definitely presented to it the question of whether or not it would adopt in Florida the so-called bankruptcy rule or the so-called Federal rule for the disposition of claims which were secured by collateral deposits. The case was thoroughly briefed on every conceivable angle and I personally argued it before the Supreme Court when the case was heard. I do not believe my name appeared in the report of the case because I did not sign the briefs as counsel, but I did make the oral argument.

It seems to me that the effect of the holding is to adopt the rule that creditors of a closed bank who hold collateral securities for their deposits must first deduct the value of such securities and then put in a claim for the balance as a common creditor. The Court refers to and says that it adopts the so-called bankruptcy rule in preference to the Federal rule. The rule itself is to the effect that the value of the securities held must be deducted whether they have actually been sold or not, and I consider that this method will have to be followed in handling the deposit of county funds in the Bank of Bay Biscayne which is referred to in the letter of Mr. Small, the County Attorney, dated June 23rd.

Yours very truly,

FRED H. DAVIS, Attorney General.

GASOLINE TAX.—APPLICABLE TO TEXACO AERODIESEL FUEL.

June 27, 1930.

Dear Sir:

This will acknowledge receipt of your communication of June 25th, enclosing letter of June 16th, sent to you by the representative of the Legal Department of the Texas Company in New York, and which is returned to you herewith.

As I have previously pointed out in my letter of June 14th, the question at issue is whether or not fuel is a "like product of petroleum" to gasoline. Apparently the fuel itself is a product of petroleum but if it requires a special engine of the Diesel type which is designed primarily to burn crude oil, it would appear not to be such a like product of petroleum as to be subject to the tax. The State Chemist's report

shows that Texaco Aerodiesel fuel is more nearly like kerosene than any other product of petroleum.

As I have pointed out above, the question involved is one of *fact* rather than one of law, as the law on the subject is plain, but the *fact* of whether or not this particular fuel is a like product of petroleum to gasoline, is not plain. My suggestion would be that so long as the company selling Texaco Aerodiesel fuel confines the sale of same for use exclusively in the special type diesel engine in aeroplanes and for aeroplane use only in connection with such engines of such special type, that such fact be considered as evidence that Texaco Aerodiesel fuel is not to be considered a like product of petroleum to gasoline insofar as such use is involved and that it is therefore not subject to the tax when so used in aeroplanes only and in those aeroplanes equipped with the special type engine.

The question involved being one exclusively of fact more than of law may be made thus to turn upon the evidentiary showing demonstrated by the practical use of the fuel referred to for aeroplane purposes only and then only in special type engines designed for burning fuel different from gasoline.

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAXES.—TURPENTINE AND MILL OPERATORS ON LANDS WHICH
HAVE BEEN SOLD FOR TAXES.**

July 30, 1930.

Dear Sir:

This is in answer to your letter of July 25th on the above subject.

In my opinion a suit can be maintained to restrain the carrying on of turpentine or saw mill operations on land sold for taxes, after the period of six months has elapsed from the date of the tax sale and no redemption has been made.

I return herewith the papers submitted with your letter.

Yours very truly,

FRED H. DAVIS, Attorney General.

REAL ESTATE COMMISSION.—PAYMENT OF EXPENSES.

June 29, 1930.

Dear Sir:

Your letter of July 7th, on the above subject has not been answered because I have been away from the City for the past two weeks.

It appears to me that the contingent fund provided for by Section 12 of Chapter 12223, Acts of 1927, is merely intended as a convenience to enable the Commission to pay small cash items and other items which would be delayed by having the same pass through the Treasury, and that the real fund out of which the same are to be ultimately paid is the Real Estate Commission Fund provided for by Section 13 of the Act. Section 12 of the Act provides:

"The Commission may maintain a Contingent Fund subject to its check for the purpose of meeting emergency or contingent expenses not exceeding \$1,000.00, said fund to be reimbursed

from time to time upon filing vouchers with the Comptroller to be audited by him showing the items for which expenditures have been made."

In the instant case where the contingent fund of the Florida Real Estate Commission has been made unavailable by reason of bank failures for the purposes of the Commission, I am of the opinion that the Commission has the right to withdraw from the Real Estate Commission Fund provided for by Section 13 a sum not exceeding \$1,000.00 for the purpose of establishing the contingent fund provided for by Section 12. The language of the statute is that the Commission may "maintain" a contingent fund for emergency purposes. It seems to me that this language comprehends the idea that the Commission shall at all times have the benefit of such Contingent fund in order to carry out the purposes for which it was created. Whatever moneys was in the contingent fund in the closed banks when ultimately realized on can be returned to the Real Estate Commission Fund. I am, therefore, of the opinion that upon voucher of the Florida Real Estate Commission so requesting the Comptroller would be justified in drawing his warrant on the Real Estate Commission Fund for a sum not in excess of \$1,000.00 for the purpose of re-establishing and maintaining the contingent fund provided for by Section 12 of Chapter 12223, Acts of 1927.

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAXES.—COMMISSIONS OF TAX ASSESSOR FOR ASSISTING
SUPERINTENDENT ROAD AND BRIDGE DISTRICT TAXES**

August 2, 1930.

Dear Sir:

This is in answer to your request of August 2nd for my opinion as to whether or not under Section 1028, Compiled General Laws 1927, the county assessor of taxes is entitled to receive commissions upon the amount of special road and bridge district taxes assessed in his county, notwithstanding the holding of the Supreme Court, in the case of J. G. Rawls, et al, vs. State ex rel, Oscar Nolan, Tax Assessor, 122 So. 222, 98 Fla. 103, in view of the fact that Chapter 14486, Acts of 1929, provides for a depository of sinking funds and taxes for road and bridge districts to be administered by the State Board of Administration and the collecting and turning over of the taxes of said districts to the county treasurer ex officio to be administered by a State board of administration, in connection with general county funds appropriated to relieve in part the burdens of taxation in said districts.

In the Nolan case above referred to, the Supreme Court construed Section 1028, Compiled General Laws, as not entitling the tax assessor to receive commissions for assessing "district taxes of any nature." Said opinion of the Supreme Court, however, was rendered on a case which originated prior to the enactment of Chapter 14486, Acts of 1929, which declares that all roads, bridges and highways which have been constructed by counties or by road and bridge districts in such counties serve a county and State purpose, and provides for the appropriation of

county funds as such to a discharge pro tanto of the obligations of such special road and bridge districts.

Said Chapter 14486, provides that all taxes levied for the payment of principal and interest of bonds issued by special road and bridge districts shall be collected in the manner required by law and payment enforced in like manner as county taxes, and when collected shall be remitted by the county official receiving the same to the State Treasurer as county treasurer ex officio. Under said Act the proceeds of all of said taxes in special road and bridge districts are taken out of the hands of the local districts officials for administrative purposes, and are placed in charge of the county treasurer ex officio to be administered by a State Board as being part of a general county fund provided by the Legislature for taking care of county and district road and bridge obligations on practically the same basis.

Said Act provides for the raising and appropriation of a county tax which may be used for the purposes of said districts on the theory that said districts serve in part a county purpose. Such a construction of the law has been expressly upheld by the Supreme Court in the case of *Amos vs. Mathews*, 126 So 308, which was decided after the *Nolan* case above referred to.

Construing Chapter 14486, Acts of 1929, in the light of the Supreme Court's opinion which passed upon the constitutionality of the same, and bearing in mind that there was nothing in the holding of the opinion of the Supreme Court in the *Nolan* case which denies the right of the county assessor of taxes to receive commissions upon the amount of special taxes assessed but only upon purely district taxes assessed and collected as such, it appears to me that whatever may have been the status of the right of a county tax assessor to receive his commissions for assessing taxes levied to support bond issues for special road and bridge districts, prior to the enactment of Chapter 14486, that under situation as now exists the effect of Chapter 14486 is to recognize taxes levied and collected in special road and bridge districts as a part of a general county tax fund to be administered as such by the same official who handles other admittedly county funds with which such taxes are commingled, and that therefore special taxes levied in road and bridge districts to support bond issues of said districts are now to be considered as special taxes within the purview of Section 1028, Compiled General Laws, which entitles the county assessor of taxes to receive a commission on the assessment of the same.

I therefore give it as my opinion that the county assessor of taxes is now entitled to receive commissions for the assessment of special road and bridge district taxes in all cases where such taxes are required by law to be remitted to the county treasurer ex officio, and administered by the State Board of Administration under Chapter 14486, and that such commissions should be paid in that respect as other commissions of the county tax assessor are paid.

The basis for this opinion is the changed aspect and status which the Legislature has placed upon taxes levied for the support of bond

issues of special road and bridge districts, as evidenced by Chapter 14486, Acts of 1929, and other statutes in pari materia thereto.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

BANKS.—RIGHT OF SET-OFF BETWEEN CLOSED BANKS AND DEPOSITORS

August 5, 1930.

Dear Sir:

This will acknowledge receipt of your letter of July 21st, in regard to the above matter and requesting my opinion in same.

The rule laid down by the Supreme Court regarding set-offs between closed banks and their depositories is that the right to set-off must be determined as of the status of things when the bank closed. From the statement made to you by the Receiver, it appears that at the time the bank closed the note of the City of Largo to Mr. Fuller was then in Mr. Fuller's hands, consequently there was at the time of the closing of the bank no right of set-off between the City of Largo and the Pinellas County Bank. The fact that the Receiver for the Pinellas County Bank has later acquired the note which the City of Largo owed to Mr. Fuller, in my judgment, give the City of Largo no right of set-off against the Receiver on account of deposits had by the City of Largo in the closed bank.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX CERTIFICATES.—FORECLOSURE OF.

August 13, 1930.

Dear Sir:

I return herewith your letter of July 31st, with attached file in the above matter.

The 1929 law authorizes the County Commissioners or the Comptroller to bring suits to foreclose tax certificates held by the State which are more than two years old. While it might be advisable for the Comptroller to join in all such suits and be a party thereto, in my judgment the County Commissioners have plain authority to proceed in the matter without the joinder of the Comptroller.

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL FUNDS.—INTEREST ON DEPOSITS OF

August 13, 1930.

Dear Sir:

Sections 2405, Compiled General Laws, provides that a bank, in order to qualify as county depository, must file with the Board of Public Instruction a written offer and guarantee to pay said board or boards two per cent per annum on all daily balances when such funds exceed \$2,000 and four percent per annum on time deposits, and shall execute and deliver satisfactory security for the funds deposited.

The statute further provides that the board of public instruction must

make an equitable division of the funds among all banks that have qualified as county depositories, and in the event that no banks in the county qualify the board is authorized and commanded to divide the deposits among the banks in some other county meeting the conditions provided by law.

In my opinion the statute should be construed as giving to any bank which meets the conditions prescribed by Section 2405 an absolute right to become a county depository and receive its fair share of county deposits, when it complies with the conditions set forth in that Section. It also puts on the school board the duty of designating as depository those banks which comply with this Section either in the county or in some other county.

Nevertheless, there is nothing in the statute which prohibits the school board from designating a bank as a depository for a less rate of interest than prescribed in the statute, where the Board has made an effort to secure depositories which will pay the rate of interest prescribed in the statute, and no bank has offered to become such depository and pay the statutory interest.

I am therefore of the opinion that in the event, but only in the event, that the Board of Public Instruction is unable to secure any bank which will agree to pay the statutory rates of interest prescribed by Section 2405, that such board of public instruction will be authorized to designate temporarily as depository of school funds, banks which agree to pay a less rate of interest than the statutory rate prescribed by Section 2405. However, the power to designate a depository agreeing to pay less rates of interest than fixed by statute is of an emergency character only and of temporary nature. If any bank is later found which agrees to pay the statutory interest and comply with the conditions of Section 2405, the Board must immediately compel the other temporary depositories to meet the conditions of the statute or disqualify them as such depository.

The statute must be read in the light of the fact which was known to the Legislature, that the State cannot compel a bank to make a contract against its will. It must also be read in the light of the fact that depositories of public moneys must be maintained. If the constituted authorities are unable to get the interest rate fixed by statute, after attempting to do so, they have done all that is required of them under Section 2405, and are then authorized to temporarily deal with the situation on a different basis as hereinbefore pointed out.

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAXES.—REDEMPTION WHERE LAST VALUATION LESS THAN
REGULAR VALUATION.**

August 29, 1930.

Dear Sir:

Section 997 provides that unpaid or omitted taxes in connection with tax redemptions shall be collected upon the basis of the regular valuation placed upon the land by the assessor for the year for which taxes remain unpaid, and where no valuation was so placed, then the last

assessed valuation prior thereto shall be considered the regular valuation, But where the last assessed valuation against any land is less than the regular valuation, then the last valuation shall be used.

In the case of redemptions now being made or made at any time up until November 1st, 1930, the last assessed valuation is the 1929 valuation, and not the 1930 valuation, because until the tax roll is completed and turned over to the tax collector on November 1st, 1930, there is in contemplation of law no 1930 valuation. Consequently, the valuation which must be used in redemptions, where redemptions are made upon the *last assessed valuation*, because such valuation is less than the regular valuation, the valuation which must be used is the 1929 valuation up until November 1st, 1930, because the 1930 valuations have no effect prior to that time.

I return herewith the letter which has been received by you from Hon. T. W. Jones, Clerk of the Circuit Court of Santa Rosa County, with reference to this matter.

Yours very truly,

FRED H. DAVIS, Attorney General.

SMALL LOAN COMPANY.—AUTHORITY OF COMPTROLLER TO
REFUSE LICENSE.

September 3, 1930.

Dear Sir:

In my opinion the Comptroller has only a limited authority to refuse to issue a license for the conduct of a small loan business under Chapter 10177, Acts of 1925. This limited authority is confined to a determination by the Comptroller as to whether or not the proposed licensee has properly made out his application and given the required bond. The Comptroller is without power to exercise a discretion to refuse a license under the Act on the ground that there is no necessity for the small loan company, or that some other consideration requires that the license be not issued.

Apparently the law contemplates that upon making the necessary application and giving the required bond the license shall be issued by the Comptroller as a matter of course and as a matter of legal right to the applicant, but under Section 6 of the Act the Comptroller is vested with authority upon notice and opportunity to be heard to revoke any license issued by him, when the licensee has violated any provision of the Act.

I return herewith the papers submitted to me in connection with the application for license of Thrift Plan of America, Inc.

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS—CO-OPERATIVE MARKETING ASSOCIATION

September 15, 1930.

Dear Sir:

I hand you herewith communication received by me from attorneys Wilson & Boyle, Sanford, Florida, relating to the above matter.

Section 6473, Compiled General Laws, provides that the organizers of

a cooperative marketing association shall prepare a statement in writing setting forth the purpose for which such cooperative corporation is organized and shall therein declare the purposes of the organization, and also the manner and method which is to be used in the conduct of the business of said organization, a copy of which statement shall be furnished immediately to the Comptroller of the State of Florida, together with a filing fee of \$5.00, and before any such organization shall be allowed to do business in the State of Florida or to sell stock in the State of Florida, either by mail or otherwise, the purposes of such organization and the methods outlined in such statement shall be approved by the Comptroller and Attorney General of the State of Florida, or by such Board as may be provided by law having authority to grant permits to sell stocks, bonds and securities in the State of Florida, provided that no permit shall be denied by the Comptroller and the Attorney General except when it shall appear to such officers that it is the intention and purpose of the proposed organizers to perpetrate a fraud or to engage in an unlawful or fraudulent enterprise, or to engage in a promotion stock selling enterprise, or that the amount of money required to be paid in by purchasers of stock is in excess of the value of advantages to be received by such stockholders.

I have examined the papers submitted and they appear to me to be in compliance with Section 6473, Compiled General Laws.

Yours very truly,

FRED H. DAVIS, Attorney General.

GASOLINE TAX.—ON TANKS LEASED TO MUNICIPALITIES.

October 22, 1930.

Dear Sir:

This is to advise you that on October 17th, the Supreme Court in an opinion by Justice Strum, concurred in by all members of the Court, held that cities, towns and counties, purchasing gasoline are not entitled to claim a deduction from their purchases of the 6c sales tax imposed by the general gasoline tax law of the State.

The case of the Orange State Oil Company involved a claim by that company to the effect that gasoline contracted to be sold and delivered by the Orange State Oil Company to the City of Miami in tanks leased to the City of Miami was exempt from the sale tax of 6c per gallon imposed upon gasoline sold in Florida. The Supreme Court rejected this claim and held that the fact that the gasoline was sold to the City made no difference, and that the dealer should be required to pay the tax on same the same as if the gasoline had been sold to an individual.

In accordance with this opinion, you will now be permitted to enforce the collection of the tax which has been in dispute many months pending this litigation.

Yours very truly,

FRED H. DAVIS, Attorney General.

**GASOLINE TAX.—STORAGE IN CITIES, TOWNS, ETC.—
COLLECTION OF**

October 22, 1930.

Dear Sir:

This is to advise you that on October 17th, the Supreme Court in an opinion by Justice Strum, concurred in by all the members of the Court, upheld the validity of Chapter 13756, Acts of 1929, imposing a gasoline tax of 6c per gallon on all gasoline kept in storage in this State for a period of twenty-four hours or more, which gasoline had not been previously subject to tax imposed upon the sale of same.

The Supreme Court also held in a separate case brought by the City of West Palm Beach that the terms of the Act required the collection of this storage tax from cities, towns, counties and districts, as provided in Section 1 thereof, as well as from private persons, firms and corporations.

In view of the fact that the law in question has been upheld and its application and construction settled by the Supreme Court there is now no bar to its complete enforcement in manner and form as therein provided.

Yours very truly,

FRED H. DAVIS, Attorney General.

APARTMENT HOUSES.—IMPOSITION ROOM TAX

October 23, 1930.

Dear Sir:

This is to advise you that under date of October 22nd, the Supreme Court handed down an opinion in the case of State ex rel George E. Warren vs. M. P. Lehman, Sheriff of Dade County, in which the Court held that paragraph (d), Section 6, Chapter 14491, Acts of 1929, was constitutional, and that the tax therein provided amounting to fifty cents per room and twenty-five cents for each bathroom in apartment houses was legal and valid, and should be collected.

I am passing this information on to you in order that you may advise the several tax collectors of the State that the Act in question has been upheld by the Supreme Court and should now be enforced. A copy of the Supreme Court's opinion is handed you herewith.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX CERTIFICATES.—SALE TO HIGHEST BIDDER—CONSTITUTIONALITY OF LAW.

November 25, 1930.

Dear Sir:

This is to advise you that the Florida Supreme Court in two opinions just handed down has upheld in all essential particulars the constitutionality of Chapter 14572, Acts of 1929, Laws of Florida, which provides for the foreclosure of tax certificates and for the offering of for sale and the selling of tax certificates to the highest and best bidder through the clerks of the Circuit Court. A copy of the opinions of the Court in the cases mentioned has been previously sent to your office by me, and I suggest that you call attention to all clerks of circuit courts to the provisions of the law in question as well as the decision of the

Supreme Court, in order that those tax payers who are now delinquent and who desire to avoid the heavy penalties for failure to redeem their lands from tax sales may be able to do so at an early date before their certificates are sold to bidders for same as contemplated by the 1929 law.

The Supreme Court in its opinion has upheld the provisions of the law which provides for an attorney's fee in these foreclosure proceedings, as well as other costs incident to foreclosure, and tax payers whose taxes have been delinquent for more than two years last past can save these penalties by redeeming their lands from tax sales while the certificates are still in the hands of the clerks of the circuit court prior to the time such certificates are sold to outside purchasers and foreclosure proceedings on same instituted.

My suggestion is that a letter be directed to all clerks of the circuit court calling attention to the above court holding, and that the clerks of the court be requested to give the same full publicity in the local press of their several counties for the benefit of those who may be affected.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE TREASURER

SURETY COMPANIES—REQUIRED TO DEPOSIT CERTAIN BONDS WITH STATE TREASURER.

February 23, 1929.

Dear Sir:

Section 6302 (4339) Compiled Laws of 1927, provides that surety companies doing business in Florida shall be required to deposit with the State Treasurer certain negotiable bonds to the value of seventy-five thousand dollars, as surety for performance of its contracts and payment of claims against it.

The statute provides for the return of the bonds "whenever such company ceases to do business in this state, and has settled up all claims against it" and "has been released from all the bonds upon which they have been taken as sureties."

My construction of this statute is that same was intended as a protection to persons who deal with surety companies under the laws of Florida, and as a protection to bonds written by the surety companies in the state of Florida under a license from the state to write such bonds in this State, and that such deposited bonds should only be held by the State Treasurer for the protection of claims against such companies arising out of policies issued in the state of Florida, or arising out of judgments against such companies obtained in the courts within the state of Florida, and not as to business done in other states, as to which last mentioned, such other states no doubt have provided their own protection. I further construe the statute as covering all claim against it, under any contracts or policies issued by it, regardless of kind, character or description, so long as the same as done under the permit of the state of Florida to engage in business in this state. The statute specifically provides that the company must have settled up "all claims"

against it, *and in addition* thereto must have been "released" from all bonds, etc.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

POWER OF ATTORNEY—IF SURETY AUTHORIZED TO ISSUE
UNDER CERTAIN CONDITIONS

Tallahassee, Fla., February 23, 1929.

Dear Sir:

The National Surety Company proposes to issue to divers persons, for a consideration in that behalf, an irrevocable power of attorney, for a stated period of time fixed in the power of attorney to be issued, by which such National Surety Company authorizes the named holder, as attorney in fact for it, to execute, acknowledge and deliver in behalf of said National Surety Company, any bail bond or other legal undertaking in such form and in such amount, in any instance, not exceeding five thousand dollars, in such respects as may be required, by any judicial officer having authority to fix and approve bail bonds, for the release of persons arrested for violating the laws of Florida or any municipality thereof, whether felony or other criminal offense, by the use of motor vehicles on the highways or streets within this state, excepting violations of the state and federal prohibition laws committed by drivers of automobiles.

In response to your request for my opinion as to whether or not the laws of Florida permit such a plan of operation to be carried out in this state, I beg to advise that I am of the opinion that such plan of operation is entirely lawful, and not in violation of section 6224 (4267) Compiled Laws, 1927, which last mentioned section governs the execution of indemnity or casualty bonds and not that class of bonds known as "bail" bonds which are peculiar to criminal practice and jurisprudence.

The practical operation of the declared plan about which this opinion is written, is that for a stated premium, the National Surety Company will expressly authorize an automobile owner or operator, when arrested for violation of any motor vehicle law, to execute his own bond, both as principal and as attorney in fact for the National Surety Company as surety thereon, and secure his release on a bond on which the National Surety Company contracts to become surety to an amount not exceeding five thousand dollars, during the time stipulated in the contract.

The laws of Florida authorize all sheriffs, constables, police officers and judicial officers having jurisdiction to accept and approve bail bonds, to accept as sole surety any duly licensed surety company doing business in this state (see Sections 6297 and 6298 Comp. Laws, 1927) and accordingly it is the duty of any officer of the law to whom a bail bond is presented under the above plan, to accept same if within the limitations stated in the power of attorney, and release the arrested person pursuant thereto.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

BURIAL ASSOCIATION, N. J. CLARK'S—NOT SUBJECT TO LAW
REGULATING FUNERAL BENEFIT ASSOCIATIONS OR
FRATERNAL ASSOCIATION

February 23, 1929.

Dear Sir:

N. J. Clark's Burial Association, of Quincy, Florida, is an organization composed of five hundred residents of Gadsden County, Florida who subscribe to a certain written contract with N. J. Clark, Funeral Director of Quincy, Fla., and each and every other member of the association, by which it is agreed that each member of the association shall pay a certain membership fee upon joining the association and annual dues thereafter, as well as pay an assessment of \$1.00 upon the death of any member thereof, in consideration of which any member upon his death shall be entitled to receive a funeral or burial, including casket, of the value of \$500.00, to be furnished by said N. J. Clark, Funeral Director, without expense. The association has no ritualistic ceremonies nor has it any representative government, nor does it pay nor undertake to pay any funeral benefits as a society.

Under the circumstances it appears that the proposed plan of operation which has been filed with you by said association, and which is substantially as above outlined, constitutes a service contract between N. J. Clark, Funeral Director, on one hand and the members of the association on the other hand, by which the funeral director agrees with each member to furnish certain "service" upon the death of a member, and such members agree to pay the stipulated dues and assessments in consideration of the promised "service."

Complying with your request for my opinion as to whether such proposed association falls under the regulatory laws governing funeral benefit societies and fraternal societies having funeral benefits. I beg to advise that in my opinion the proposed society, if confined to the plan outlined in the papers filed with you, will not be subject to your regulation and supervision as a funeral benefit association or fraternal association, but must be deemed as a "service" proposition only between the undertaker named and the divers members of the society.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

BONDS, SCHOOL DISTRICT—NOT WITHIN PURVIEW OF
SECTION 6293, C. L.

February 23, 1929.

Dear Sir:

Section 6293, Compiled Laws of 1927, provides in part as follows:

"6293. (4330). INVESTMENT REQUIRED OF COMPANY.

No surety company . . . shall be licensed to begin business unless it is possessed of and has actually invested, at least one hundred thousand dollars in bonds of the United States, or any state, or any county or municipality in the United States, or mortgages or deeds of trust on improved, unencumbered real estate, worth

not less than fifty percent more than the amounts loaned thereon, at their market value, to be approved by the State Treasurer."

Under the generally accepted rule of statutory construction known as "*nescitur a socais*" I am of the opinion that school districts or other district bonds or any bonds other than the specifically named United States, state, county or municipal bonds, are not within the purview of the above law, and that such school district or other district bonds would not be legal as a part of the \$100,000.00 investment required of surety companies under section 6293, Compiled Laws, 1927.

It appears to be that it would be entirely proper to suggest the amendment of Section 6293 at the coming session of the Legislature, so as to include school district and other district bonds at their "market" value, as many school district bonds are more valuable than some "municipal" bonds of insignificant towns that have come under my observation, and the amendment of this section would tend to widen the market and thereby increase the value of such school district bonds.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

MUTUAL FUNERAL AND BURIAL ASSOCIATIONS—IF SUBJECT
UNDER LAW AS SICK AND BENEFIT ASSOCIATIONS

August 12, 1929.

Dear Sir:

An opinion has been previously rendered from this office on February 23rd, 1929, to the effect that a contract by an undertaker with a number of persons to render them certain burial services in consideration of the payment of a certain amount of dues, and an assessment of \$1.00 upon each member upon the death of any member, the undertaker agrees to furnish the funeral services and obtain re-imbursement from the collection of the assessment upon the members was a "service" contract by the undertaker and not one subject to the sick and funeral benefit association laws of the State of Florida.

The plan involved in the proposed Mutual Funeral and Burial Association, Inc., of Pensacola, Florida, even though organized as a corporation not for profit, goes much further than the scope of the opinion heretofore rendered by this office and falls clearly within the terms of Section 6260 of the Compiled General Laws of Florida, which defines sick and funeral benefit insurance to be any policy, contract or agreement whereby a company, corporation or association stipulates to provide for the insured expense of funeral in case of death.

The State has undertaken to regulate sick and benefit associations in order that persons who pay dues to these organizations over a long number of years may, when their time comes to realize benefit from such payments, be assured that the association which has contracted with them will be in existence and able to perform its contracts when called upon.

The service contract, however, which an undertaker agrees with a number of persons, any five hundred, that upon the death of any one of the five hundred, he will bury such person at an expense not exceeding \$500.00 and look to the remaining number left alive to collect an assessment of \$1.00 per member to re-imburse him, involves no undertaking or

guarantee by the undertaker that he will protect the five hundred persons at all, even should they all die at the same time and, therefore, lacks one of the essential requirements of an assurance undertaking, although it closely approaches the same.

The proposed Mutual Funeral and Burial Association, Inc., of Pensacola, Florida, if organized upon the terms stated in your letter would have all the attributes of a funeral benefit association which is subject to the regulations of your department, and should be compelled to comply with the requirements of the laws of Florida if it does business in that manner.

I am returning herewith the papers submitted with your letter.

Yours very truly,

FRED H. DAVIS, Attorney General.

DOMESTIC INSURANCE COMPANIES—POWER INSURANCE COMMISSIONER TO PERMIT REDUCTION CAPITAL STOCK.

December 18, 1929.

Dear Sir:

Replying to your letter of December 9th I beg to advise that in my opinion you are authorized under Section 4244 and 4249, Revised General Statutes of Florida, construed in connection with Section 1 of Chapter 9149, Acts of 1923, Laws of Florida, to permit a domestic insurance company to reduce its paid up capital below \$100,000, without reducing its authorized capital below that amount, provided the company is left in possession of assets of the value of \$100,000 or more, as provided by Section 4249, Revised General Statutes.

Trusting this answers your request for my opinion, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

INSURANCE PREMIUMS—WHEN SHOULD BE RETURNED FOR TAXATION

March 4, 1930.

Dear Sir:

This is in reply to your letter of January 31st, in which you request my opinion as to whether or not premiums on insurance, covering the interest of Florida residents in airplanes where policies have been written before the planes are brought into the State of Florida but after their purchase by residents of this State, should be reported for taxation in this State. Also whether or not policies covering such risks should be sent to a Florida resident agent of the Insurer for counter signature in accordance with Section 4276, Compiled General Laws.

In answer to the first portion of your inquiry I beg to advise that under the terms of Section 2 of Chapter 10151, Laws of Florida, approved June 3rd, 1925, all premiums on policies or other contracts of like nature on property or business in this State, executed by fire and marine insurance companies, surety companies, and policies or other contracts of indemnity coverage, whether issued directly by a Florida resident agent or countersigned by him shall be included by the company in its exhibit of Florida business in its annual financial statement to the State Treasurer.

Chapter 10150, Acts of 1925, provides that the tax shall be paid on the

gross amount of receipts of premiums "from policy holders in Florida." I am therefore of the opinion that premiums on insurance covering the interest of residents of Florida on property which is usually kept in this State should be returned for taxation under the Florida law, regardless of where the policy may have first been written.

On the other hand, I am of the opinion that Section 4276, Revised General Statutes, which requires all policies or contracts against loss by fire to property located in this State, issued or entered into by any insurance company to be issued and countersigned by a local agent who is a resident of this state, has no application where a policy of insurance or indemnity is issued through an agency in another State, where the property is at the time located, but which property is subsequently brought into the State of Florida or intended to be brought into the State of Florida at the time the policy is issued; particularly, airplanes which are purchased and insured outside the State, but which are subsequently brought into the State and which at the time of the taking out of the insurance was intended to be kept in Florida and the risk carried here.

The tax appears to be imposed on the gross receipts of premiums realized from Florida policy holders. It is therefore clear that the place the policy was originally issued is immaterial in the application of this Statute.

On the other hand, the terms of Section 4276 cannot be construed to apply to the making and issuance of a policy which is made and issued entirely beyond the jurisdiction of the State on property which at the time of the issuance of the policy is not within the State's jurisdiction. The rule is otherwise where at the time the policy is issued the property is within the jurisdiction of the State of Florida. In the last mentioned case, the policy must be countersigned by a resident agent.

Yours very truly,

FRED H. DAVIS, Attorney General.

RECIPROCAL INSURANCE CONTRACTS—LIABILITY OF SUBSCRIBERS

March 17, 1930.

Dear Sir:

Owing to the importance which might be attached to my answer to your inquiry of February 3rd, 1930, asking for my opinion on the above subject, as well as the time required to make the necessary examination of the authorities required to be consulted in the premises, I have just now been able to conclude my study of the law controlling the proposition, and beg to advise you as follows:

Section 6249, Compiled General Laws, expressly provides that individuals, partnerships and corporations of Florida, designated as subscribers, shall be authorized thereby to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance.

Section 6250, C. G. L., provides for the execution of such reciprocal or inter-insurance contracts by an attorney, agent or other representative,

duly authorized and acting for such subscribers, while other provisions of the statutes prescribe appropriate regulations designed to afford protection to the citizens of Florida and others who may become connected with any of the authorized reciprocal or inter-insurance undertakings.

The question presented for my opinion is whether or not a reciprocal insurance subscriber to an inter-insurance contract made under the laws of Florida can, by a provision of his contract limit his liability under such contract to the amount of premiums specified in the contract, both *inter sese* and against so-called third parties, such as might deal with the Attorney in Fact in such manner as to bring about a liability to such third parties on engagements or undertakings made by such attorney in fact in connection with the operation of the reciprocal organization.

To effectuate this limitation of liability, certain of the contracts filed with the State Treasurer under Section 6251, C. G. L., contain the following provisions, as shown by your letter:

"It is expressly understood that the amount of premium specified in this contract is my total liability; and neither my attorney, deputy, any other Assured, nor any other person, shall have authority to bind or obligate me for any amount in excess of the above fixed limited liability."

"(H) This policy is non-assessable; it being expressly understood the amount of premiums specified in this contract is the total liability of Assured, that liability ceases with its payment as herein specified, and neither our attorney, deputy, any other subscriber, nor any other person, shall have authority to bind or obligate Assured for any amount in excess of the above fixed limited liability."

The particular question presented, therefore, is what is the legal liability of reciprocal insurance policy holders under contracts of reciprocal insurance otherwise made according to law in the State of Florida with Florida reciprocal insurance organizations when the foregoing clauses are contained in the insurance application and contract.

At the outset, it must be borne in mind that reciprocal insurance is in all respects substantially an arrangement under the old English Lloyds' insurance systems, as that system has been modified and adopted in the United States. The Lloyd's system is the oldest system of insurance known to our law, and may be defined as an insurance arrangement under which members of an association not incorporated agree to insure each other, or some third party, against loss or damage from an unknown or contingent event, each subscriber or policy holder agreeing to bear a stipulated amount of such loss, the plan being carried out through the appointment by each insured of a certain attorney in fact who acts as the agent of each subscriber to bind him as an underwriter severally to the others for a specified amount stated in the contract. The liability thus created is several and not joint, on the part of the subscribers, while the powers of the attorney in fact appointed by them are specifically set forth and limited in the arrangement.

In passing upon the extent of liability assumed by the subscribers

inter sese (or as to each other) the Court of Appeals of Texas concisely stated the law as follows in a recent case involving that question:

"As between themselves, they are liable as their contracts with each other make them liable. * * We conclude that the underwriters are liable severally only, and only for their percentage of the entire loss as fixed by the policies."

M. & M. Lloyd's Ins. Exch. Vs. So. Tr. Co., 229 S. W., text 316.
To the same effect are other cases cited in 38 C. J. 114-124.

As to whether or not the subscribers can limit their liability to so called third parties, that is, parties who deal with the Attorney in Fact who makes engagements on behalf of the reciprocal organization for its benefit, such as liabilities incurred for services of employees, re-insurance premiums, and the like, the law in Florida is obviously different from what it is in other states because of our specific statutory recognition of reciprocal insurance companies and the express statutory authority given them by Section 6249, C. G. L., to make and exchange inter-insurance or reciprocal insurance contracts.

While it has been held (*Sergeant Vs. Goldsmith, D. Co.*, 221 SW 259) that as to third persons dealing with a reciprocal association and to whom it incurred lawful debts contracted within the powers of whatever agency it employed are jointly and severally liable as principals, on the theory that the members or subscribers could not create an organization, give it a name, invite others to sell it supplies or render it services, for instance, for their benefit, and not as principals be liable for such debts to third persons incurred in carrying out the purposes for which the reciprocal organization was formed, the principle of law on which such holding rests, as stated by the case of *Davison vs. Holden*, 10 ATL 515, cited by the Court in support of it, is that the members of the association become liable individually and jointly because they have created and clothed an agent with unrestricted authority to make contracts for their benefit and consequently must bear the attendant liability.

However, no such situation can arise in Florida because our Florida statute takes the case out of the common law rule by specifically licensing and regulating reciprocal insurance companies, under the statute.

Both the form of contract and power of attorney used are required to be filed with the State Treasurer thereby making a public record of the nature and extent of the authority of such attorney in fact, whose powers to bind his principal are specifically and in terms restricted by the instrument evidencing his appointment, in order that all who may deal with him may be advised thereof and contract with reference thereto.

I therefore, give it as my opinion that under the laws of Florida, reciprocal insurance subscribers may by appropriate contracts limit their liability among themselves and to third persons as well, to the amount of premiums specified in their contracts and may make such stated amount of premiums their total liability under the policies held by them.

I am further of the opinion that the quoted provisions of the application and insurance contract hereinbefore set forth in this letter are legally sufficient to accomplish the limitation of liability of the subscriber to the amount of premium specified in the contract, and that under such

provisions, liability of the assured for all purposes ceases with the payment of such premiums as are specified.

In this connection, you are advised that the foregoing opinion is limited to a discussion of the rights and liabilities of those subscribers only who contract with reciprocal insurance organizations organized under the statutes of Florida. The status and liabilities of reciprocals organized in other states but doing business in Florida are not passed upon by me.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

INSURANCE—WHOLESALE INSURANCE IS DISTINGUISHED FROM
GROUP INSURANCE.

May 10, 1930.

Dear Sir:

Section 6225, Compiled General Laws, prohibits life insurance companies making or permitting any distinction or discrimination in favor of individuals between insureds of the same class and equal expectation of life in the amount or payment of premiums of rates charged.

There are several stated provisos contained in the latter part of the Section, one of which deals with group insurance taken out by employers for groups of not less than fifty persons who may pay their premiums through a secretary or the employer. While certain exceptions or provisos are stated in the statute it is obvious that there are possibly other exceptions which are not stated, but which nevertheless exist because they are not within the terms of the denunciatory part of the act which is found in the first paragraph. So long as there are no discriminations or distinctions in favor of individuals Section 6225 is not violated.

Classes of insureds are expressly permitted but discrimination in favor of individuals in the same class and situation is prohibited. This gives the insurance companies power to make as many reasonable classes of insureds as the ingenuity of insurance managers may be able to suggest, so long as these classes are reasonable classes and do not by way of subterfuge or evasion create distinctions between individuals of one and the same class of insureds.

In view of your description of the difference between what is commonly designated as "group insurance" and "wholesale insurance," I am of the opinion that the creation of a class of insurance known as "wholesale insurance" is legal under Section 6225, even when less than fifty insureds are involved in a particular group subject to this so called "wholesale insurance."

However, the plan of providing for this wholesale insurance must be such a plan that all individuals who comply with the standard necessary to obtain this so-called "wholesale insurance" will be able to do so. For example, if wholesale insurance is issued to groups of ten persons it must be available to any group of ten persons having a like relation in order to avoid discrimination between individuals.

In other words, a general scale must be created for the issuance of this so called "wholesale insurance" so that it can be applied alike to all indi-

viduals falling within the description of the class. If this is done I am of the opinion that "wholesale insurance" can be legally provided for.

Yours very truly,

FRED H. DAVIS, Attorney General.

INSURANCE—DATING BACK POLICY AS UNLAWFUL DISCRIMINATION

May 12, 1930.

Dear Sir:

Replying to your letter of May 5th, I beg to advise that I find nothing in Section 6225, Compiled General Laws, (4268 Revised General Statutes) which prohibits a life insurance company from back dating a life insurance policy prior to the date of application of same, in order to give the applicant the benefit of a lower rate than would be the case if the application or policy were issued as of the true date of the same.

The purpose of Section 6225 was to prohibit discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount or payment of premium or rate charged for policy of insurance. While back dating a policy may reduce the rate for a particular individual by putting him in a class which has a lower rate than another class in which he would be put, at the same time, after he is put in such class, the rate as to him is not discriminatory as to other policy holders of the same class in which he is put.

As I have previously pointed out, Section 6225 does not prohibit insurance companies from classifying their policy holders. The discrimination which is prohibited is a discrimination between individuals of the same class, rather than a discrimination between classes as such.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

FOREIGN INSURANCE COMPANIES DOING BUSINESS BY MAIL

June 10, 1930.

Dear Sir:

Replying to your letter with reference to the liability of foreign insurance doing business in this State only by correspondence through mail, and as to whether such companies are amenable to the laws of Florida, I beg to advise that it is not quite clear from the statute just whether such cases are intended to come within the purview of the statute requiring insurance companies to conform to the requirements of the laws of Florida when such companies are not actually engaged in business in this State, but on the other hand merely solicit business by mail.

Such companies not being actually within the State and having no agent operating within the State, it would be very difficult to reach them by any process, even if it should be held that they were amenable to the laws of the State for thus doing business.

If such companies are violating the laws of the State in the manner of doing business they would be amenable under Section 7450, of the Compiled Laws of Florida, and subject to a fine of \$500 for each offense to be recovered by suit, but if such suit could be maintained at all it could

not be maintained in the State of Florida in the absence of some agent in the State representing such company for the reason that you could not get service of process. Therefore any such suit would have to be brought in a foreign State which would entail quite a bit of expense to maintain if it could be done at all.

Yours very truly,

H. E. CARTER, Assistant Attorney General.

INSURANCE—COLLATERAL SECURITY FOR BONDS.

August 1, 1930.

Dear Sir:

Your request for my opinion on the above matter submitted to this office under date of June 14th, has been delayed because of other more pressing matters requiring my attention, also because I wanted to make a complete investigation of the law governing the subject before replying to same.

It appears that the Southeastern Fire Insurance Company of Tampa, Florida, filed a qualification bond with Hon. J. C. Luning, State Treasurer, under date of October 4th, 1926, with the United States Fidelity and Guaranty Company as surety thereon. It appears that in May 1929, long after the making of the bond the Southeastern Fire Insurance Company delivered to the United State Fidelity & Guaranty Company \$15,000.00 par value Florida county and municipal bonds to indemnify the surety company for any loss it might sustain on any bond previously written for the Southeastern Fire Insurance Company or that might be written for such company subsequent thereto.

I invite your particular attention to that provision of the pledge of this collateral which makes the same subject not only to previously existing liabilities of the surety company but for any liability which might be assumed by the surety company on bonds to be executed in future. Section 6242 of the Compiled General Laws provides that fire insurance companies shall deposit with the State Treasurer certain collateral to the amount of \$20,000.00, or in lieu thereof shall have the right to file with the State Treasurer a surety bond in the sum of \$20,000.00 of a surety company authorized to do business in the State of Florida. It appears to me that the right of the insurance company to give a surety company bond implies the right of that company to make an indemnity agreement with the surety company for being surety on such bonds and that, therefore, the insurance company has the right to make a reasonable hypothecation of its assets to the surety company to indemnify it for a loss which might occur on the bond under Section 6242. This would be true even though the bond of the surety company is continuous in its nature and was executed prior to the pledge of the collateral, because the surety bond is for the protection of the policy holders and the pledge of the collateral to the surety company for the purpose of securing a surety bond is just another way of pledging the collateral which would be pledged really to

the State Treasurer under Section 6242 for the same purpose.

Trusting this answers your inquiry and regretting the delay in my reply, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

INSURANCE; AGENTS—RECOVERY OF COMMISSIONS WITHOUT
LICENSE.

August 1, 1930.

Dear Sir:

Your department will probably be interested in the opinion of the Supreme Court rendered in the case of Fromme & Company vs. Boardman Frazee Realty Company, 98 Fla. 151, where the Supreme Court says:

"Insurance agents selling insurance without procuring license as required by the Compiled General Laws, 1927, Section 6208-6212, held not entitled to recover commissions for policies issued after effective date of statute."

Apparently it is necessary for insurance agents and others who are required to be specially licensed to see that their license is kept in force by paying the required fee if the licensee expects to be able to recover their commissions.

Yours very truly,

FRED H. DAVIS, Attorney General.

INSURANCE—DISPOSITION PROCEEDS OF POLICIES

September 5, 1930.

Dear Sir:

This is in answer to your inquiry of August 29th asking my interpretation of Section 7065, Compiled General Laws, which is Section 4977, Revised General Statutes of 1920, relating to disposition of proceeds of life insurance policies.

The statute provides in part as follows:

"Whenever any person shall die in this State, leaving insurance on his life, the said insurance shall inure exclusively to the benefit of the child or children and husband or wife of such person in equal proportions, * * *"

My construction of the statute is that the proceeds of policies of life insurance falling within the provisions of the above statute inure only to those children who are surviving at the time of the insured's death, and that the representatives or heirs of children who have pre-deceased the insured have no legal interest in the proceeds of such life insurance policy.

I return herewith the file submitted to me in connection with the above matter.

Yours very truly,

FRED H. DAVIS, Attorney General.

INSURANCE: POLICIES AND PAYMENT COMMISSIONS TO AGENTS

October 6, 1930.

Dear Sir:

This is in answer to your request of September 25th for my opinion as to the legal effect of Section 6237, Compiled General Laws, which pro-

vides that renewal of licenses to insurance companies to transact business in this State shall only be issued after the secretary or manager of the company has made oath that no policy or contract to insurance covering property located in the State of Florida has been issued, written or placed during the twelve months preceding, except by resident local agents of such company, and that the said local agent has received the full, entire and actual commission duly allowed its agents for such service.

Section 6235, Compiled General Laws, provides that all policies of insurance against loss by fire to property located in this State must be "issued and countersigned" by local agent who is a resident of this State, regularly commissioned and licensed as such, and that such local agent shall receive on each policy the "full and usual commission" allowed and paid by such company or association to its agents on business written or done by them for it.

The only modification of the provisions of Sections 6235 and 6237 are those to be found in Section 6216, Compiled General Laws, which provides that it shall be lawful for any agent in Florida to divide with any non-resident agent regularly authorized and licensed in his own State his commission on business which shall have been procured and sent or caused to be sent to the Florida agent for counter-signature as required by law.

My construction of Section 6216 is that said Section is permissive only to the agent and not to the insurance company. The law requires the insurance company to issue its policies through local agents only. It also requires that such local agents shall be paid for such service "the full and usual commission allowed and paid by such company or association to its agents on business written or done by them for it."

In addition the law also requires that the responsible officer of the insurance company make a specific oath that the terms of the law have been complied with by paying the agent "the full, entire and usual commission due and allowed."

In my judgment there is nothing in Section 6216, Compiled General Laws, which repeals or modifies the terms of Sections 6235 and 6237, insofar as the insurance company as a company is concerned. The only effect of Section 6216 is to allow the agent of his own volition and for his own benefit to make an agreement with another agent located outside the State to give such out of the State agent a part of the local agent's commission, when the out of the State agent has procured insurance business and forwarded such business to the local agent.

In my opinion the law requires that the local agent prepare the policy and make the arrangements with the insured and collect from the insurance company in the first instance the full, entire and usual commission on such insurance. If the local agent has had the business sent to him by an out of the State agent, he is then permitted to divide his commissions received from the insurance company with such out of the State agent as a transaction between agents. Or the local agent may instruct the insurance company to credit a part of the commission to such foreign agent and charge it against his account.

In my opinion there is no authority under the law for an insurance company to prepare and send policies to local agents for counter-signature where the agent does not receive the full, entire and usual com-

mission which would be due and allowed him as if he had originally negotiated the insurance and prepared the policy in his own office. In fact, the law contemplates that policies of insurance on property located in Florida shall be negotiated and prepared by Florida agents and not by out of the State agents or by the insurance company itself, and then merely forwarded into Florida for counter-signature by some local agent. If an out of the State agent procures the business for the insurance company, it is of course permissible for such out of the State agent under Section 6216 to take the matter up with the local agent in Florida, in order that the contract may be prepared and issued. But the practice of insurance companies in preparing policies outside the State and merely forwarding them to some local agent for counter-signature as a sort of rubber stamping process for a part of the commissions allowed on policies, is in my judgment a clear violation of Sections 6235 and 6237.

A theory of the law is that the public shall be given the protection which is afforded by having a local agent confer with the insured, go over his insurance problem with him, examine the property, and select and tender to him the kind of insurance contract which is best suited to cover the risk contemplated. While the indirect consequence of the law is of course to increase the amount of commissions which may be earned by Florida agents, this is not its principal purpose, nor would it be sustainable as a valid law if that were the sole object of the law.

Consequently, the statute must be construed in such way that the purpose and intent of same will be subserved by the employment of the local Florida agent as a real factor in the negotiation of the insurance, rather than the employment of him as a mere rubber stamp to counter-sign the policy with whose terms he has had nothing to do in the matter of negotiation, draftsmanship or otherwise.

I return herewith the papers submitted to me with your request for my opinion.

Yours very truly,

FRED H. DAVIS, Attorney General.

INSURANCE: ATTORNEYS IN FACT—RECIPROCAL EXCHANGES
TO COMPLY FOREIGN CORPORATION LAWS.

December 16, 1930.

Dear Sir:

In a previous communication I rendered an opinion to you as ex-officio Insurance Commissioner and to the Secretary of State to the effect that incorporated attorneys in fact both foreign and domestic with reciprocal exchanges must obtain a permit to do business in the State of Florida from the Secretary of State of Florida in addition to obtaining their certificates of authority from the Insurance Department.

My opinion was based largely upon the provision of the Florida statute relating to corporations which states that it shall be deemed to apply to foreign insurance companies. Upon request of counsel representing interstate reciprocal insurance exchanges in this State, I agreed to reconsider and re-examine the various phases of the law which might apply to reciprocals in connection with the subject dealt with, and upon such reconsideration I have arrived at the conclusion that under the present

statutes of Florida incorporated attorneys in fact are not required to comply with the foreign corporation laws of this State as I previously advised.

My reasons for reaching a different conclusion about the matter are as follows:

Section 6259, Compiled General Laws, reads:

"Except as herein provided no law of this State relating to insurance shall apply to the exchange of such indemnity contracts unless they are specifically mentioned."

The exchange of reciprocal insurance as provided in the Florida laws contemplates the use of an attorney, agent or other representative in connection with the exchange. This attorney, agent or representative may be either an individual or a corporation. If a corporation, the incorporated attorney does not act for itself but only for the subscribers who are its principals. The statutes make every act of the attorney the act of its principals, whose duties and extent of activity are completely covered by law. In acting as an incorporated attorney it is not necessarily doing corporate business on its own account but on account of the subscribers who are required to pay fees and taxes on premium deposits connected with such business.

This being true it is not unreasonable to hold that since the subscribers and their incorporated attorney are authorized by special provision of law to carry on the business of reciprocal insurance in Florida, they are entitled to transact all such business without any special burden being placed upon the incorporated attorney, merely by reason of its corporate character, after proper compliance by the principals with reciprocal insurance laws of this State has been made, especially in view of the expressed intent embraced in Section 6259, Compiled General Laws, above quoted, to the effect that no law of this State relating to insurance shall apply to the exchange of such indemnity contracts unless they are especially mentioned in the reciprocal insurance law.

Considering that the subscribers are authorized by the special reciprocal insurance statute to conduct their affairs through a designated agent or attorney including a corporate attorney, and that such corporate attorney when transacting such business is only transacting the business of its principal and doing nothing on its own account as a corporation that such corporate acts of agency or attorneyship are apparently excluded from the purpose and intent of the general corporation statute which requires foreign corporations to obtain certificates of authority to transact business in Florida.

This opinion will therefore be given you in lieu of the previous opinion heretofore rendered.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

COMMISSIONER OF AGRICULTURE

GASOLINE AND OIL INSPECTION—INTERPRETATION OF LAW

January 15, 1930.

Dear Sir:

This will acknowledge receipt of your communication of December 31st, enclosing correspondence had by you with Attorneys, concerning the interpretation and application of Sections 3956 to 3972, Compiled General Laws of Florida, relating to the inspection of gasoline, naptha, kerosene, benzine or other like products of petroleum under whatever name designated, used for illuminating, heating, cooking or power purposes.

Section 3962, provides that all such oils as are covered by the Act "when sold under a distinctive name" that shall fall below the standard fixed by the Commissioner of Agriculture for such oils, when sold under that distinctive name, are declared to be illegal. In other words, it seems to me that anything sold as gasoline, kerosene and signal oil will have to comply with the standard fixed by the Department, when sold under that kind of a "distinctive name." But if same are sold not under any distinctive name which requires a particular standard as fixed by the Department of Agriculture, that then no particular standard is applicable to the oils so sold.

As I understand the present regulations of the Department, they only undertake to prescribe and fix standards for gasoline, kerosene, and signal oil, when sold under the "distinctive name" of such. If sold under some other name, which truly designates the nature of the oil sold, no particular standard is required to be adhered to, unless the Department of Agriculture should adopt new rules and regulations fixing the standard therefor.

I return herewith the correspondence submitted.

Yours very truly,

FRED H. DAVIS, Attorney General.

MILK LAW—PROCESSORS AND DEALERS

June 10th, 1930.

Dear Sir:

In my opinion, any person, firm or corporation who receives, offers for sale, transports, prepares or delivers for transportation or sale as milk processors or as milk dealers any milk or cream is liable to the license provided by Chapter 13696. This idea is very clearly conveyed by Section 6 of the Act, and the mere fact that a person, firm or corporation may be also an original producer and the owner of cows, or even a dairy does not entitle such person, firm or corporation to buy and sell milk as a dealer or to handle milk as a processor without paying the license required by Section 6 of the law. It is true that the license is not applicable to an initial producer of milk and cream who confines his business to dealing in milk and cream solely produced by him, at the same time, however, there is nothing to prevent a person from being under certain circumstances both an initial producer and

a milk processor or dealer, and where such is the case, the license must be collected.

Under the old prohibition law, one sale of whiskey constituted a man a liquor dealer, and on the same line of reasoning one transaction is buying and selling milk produced by another man constitutes the seller a milk dealer, subject to the license provided by Section 6 of Chapter 13696.

Trusting this answers your inquiry for my opinion in the premises, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

MILK—PASTEURIZING—ICE CREAM LAW

June 13, 1930.

Dear Sir:

Section 3218, Compiled General Laws, provides in part as follows:

"All products included in the mixture to make ice cream except flavoring, fruits and nuts shall be pasteurized before freezing."

My construction of the law is that the requirement for pasteurizing refers to the products which go into the mixture and not to the mixture itself, under the present language of the statute. This means that if ice cream makers use pasteurized milk and pasteurized cream in making ice cream they are complying with the law insofar as it requires pasteurizing of the "products."

Yours very truly,

FRED H. DAVIS, Attorney General.

EGG CLASSIFICATION LAW—INTERPRETATION OF

July 7th, 1930.

Dear Sir:

In your letter of June 28th you ask the question as to when eggs shall be considered as having become divested of their interstate character as that term is used in Section 2 of the law in cases where eggs are brought into this State from outside of the State and delivered to Florida dealers.

The question you ask is to be determined largely by the nature of the transaction. If a person in Florida gives an order to a producer in Alabama, Georgia or some other state to be delivered to him in Florida, the eggs at the time of the giving of the order being outside of the State of Florida and to be delivered in the future pursuant to the order taken, then such eggs retain their interstate character when brought into Florida until they come to rest and delivery is completed to the Florida dealer. On the other hand, where the eggs are brought into Florida and by a transaction made in this state while the eggs are in this state at the time the transaction is made, then the transaction is considered a local transaction and not an interstate transaction, and the law applies to the eggs from the time they are brought across the state line for the purpose of being sold or offered for sale in Florida. The eggs are under the protection of the Interstate Com-

merce Law while they are under process of being transported to a Florida consignee pursuant to a transaction which at the time the transaction occurred contemplated the delivery from outside the state to a point in the state of the eggs in question.

Yours very truly,

FRED H. DAVIS, Attorney General.

MILK—RECONSTRUCTED—SALE OF

August 5th, 1930.

Dear Sir:

I am just now able to answer your letter of July 2nd., which came to my office while I was out of the city.

Chapter 13696, Acts of 1929, known as the Florida Milk Law defines milk as the whole fresh clean lateal secretion obtained by the complete milking of one or more healthy cows properly fed, kept, etc. It seems to me that this definition contained in the 1929 milk law coupled with the provision of the 1929 milk law relating to the handling of milk *aeo nomine* (under that name) have the effect of precluding the sale of reconstituted milk in this state. By this I mean that anything which is sold under the name of "milk" must be the fresh secretions obtained from one or more healthy cows.

I find nothing in the law which would prohibit the sale of reconstituted milk provided it is not sold under the name of "milk" but is sold under such description that will identify it for exactly what it is. It would probably be lawful to designate it as "reconstituted milk," but without something to definitely identify it, the sale of it as milk is illegal.

With regard to the pasteurization of sugar, gelatin and dried eggs used in making up ice cream, I beg to advise that I find nothing in the law which requires such materials to be pasteurized. In other words if the ice cream manufacturer uses pasteurized milk, it appears to me that he may add sugar, gelatin and dried eggs and the like without requiring such added ingredients to be pasteurized.

Trusting this is the information you desire, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

BEET PULP—COLLECTION INSPECTION FEES

September 13, 1930.

Dear Sir:

Under the statement of facts appearing in your letter of September 12th, it appears that a firm in Miami, Florida, is importing large quantities of beet pulp which it has delivered to Miami by boat or rail, and then makes a practice of storing this beet pulp in dead storage and holding same there without affixing analysis tags and inspection stamps thereto and paying the fees provided for by law.

It also appears that after this beet pulp is received and while it is being held in such dead storage, small sales are often made by the

importer to customers who haul away such beet pulp without affixing the proper tags or stamps thereupon.

Answering your inquiry addressed to the Attorney General concerning your powers to deal with the situation such as above presented, I beg to advise that in my opinion your Department under the law has power to require the importer to affix tags and stamps to his goods when placing them in storage, and to pay the fees properly applicable thereon.

It appears that Section 3257, Compiled General Laws, expressly recognizes that these bulk shipments are as much subject to the commercial feed stuffs law as any other shipments. After the shipments have been received and come to rest in this State, they cease to have the further protection of the Federal laws governing foreign commerce and become subject to the laws of Florida, the same as any other property.

Yours very truly,

FRED H. DAVIS, Attorney General.

MILK LAW—MIXING OF DOMESTIC MILK WITH FOREIGN CREAM

October 17, 1929.

Dear Sir:

This is in reply to the inquiry made by Chief Milk Inspector John M. Scott, under date of October 9th, 1929, in which my opinion is requested as to whether or not local milk can be used to reduce 40 per cent cream which is shipped into this State from outside the State to 20 per cent cream, which is to be sold in this State as such. Also whether or not foreign cream can be used to increase the butter fat in local milk in any case.

Section 1 of Chapter 13696, Acts of 1929, commonly known as the Milk Law, separately deals with and defines milk and cream. Section 5 of the same Act provides:

"It shall be unlawful for any milk, either imported or domestic to be re-pasteurized, and it shall also be unlawful to mix domestic milk with milk brought in from any point outside the State of Florida prior to sale to distributors, retailers or consumers."

I am of the opinion that since cream is separately dealt with and defined in the law, there is no prohibition against the use of local milk to reduce the percentage of butter fat in imported cream, which is later to be sold as cream having a less butter fat than that with which it was originally imported. I am also of the opinion that under Section 5 of the Act, it was the intention of the Legislature to require that all fluids sold as "cream" of one grade and origin should not be mixed with milk of any other grade or origin, and that therefore insofar as "milk" is concerned in the law it is unlawful to mix foreign milk or cream with domestic milk for any purpose. The prohibition of Section 5 of the law is against the admixture of different kinds of milk, which mixing of different kinds of milk is regarded as a kind of adulteration which should not be permitted. The fact that Section 5 omits any mention of cream indicates an intention not to

deal with cream in this respect in the same manner as milk is dealt with.

Yours very truly,

FRED H. DAVIS, Attorney General.

COMMERCIAL FEED STUFFS—INTERPRETATION OF LAW

December 18, 1929.

Dear Sir:

Section 3264, Compiled General Laws, which is Section 11 of the Florida law regarding commercial feed stuffs, specifically defines what shall be understood by the designation "commercial feeding stuffs."

The definition appears to embrace principally ground grains and other mixtures, and appears to exclude whole seeds and unmixed grains. After looking into the matter carefully, I am of the opinion that your jurisdiction is limited to the "commercial feeding stuffs" as defined by Section 3264, which in my opinion does not cover sacks of whole grain, even though used for feeding purposes.

There is a general rule of law known as *noscitur a sociis*, which would be applied to a case of this kind, should the matter get into the courts. And under this rule the court would exclude anything except materials of the general classification described in the statute, all of which appear to be compound mixtures or ground feeding stuffs.

I return herewith the correspondence submitted to me with your letter of December 9th.

Yours very truly,

FRED H. DAVIS, Attorney General.

GASOLINE AND OIL—DISTILLATE SUBJECT TO LAW

January 15, 1930.

Dear Sir:

Section 3956, Compiled General Laws of Florida, provides that all gasoline, naphtha, kerosene, benzine or other like products of petroleum under whatever name designated, used for illuminating, heating, cooking or power purposes, sold, offered or exposed to sale in this State, shall be subject to inspection and analysis as provided by the Florida gasoline inspection Act, Chapter 7905, Acts of 1919.

I am therefore of the opinion that a 100 per cent petroleum distillate, made up of the lower or more volatile half of the usual kerosene fraction, but not as well refined as that portion of kerosene usually is, if intended to be used in this State for illuminating, heating, cooking, or power purposes, is subject to inspection under Chapter 7905, Acts of 1919, providing for gasoline and oil inspection, and imposing a fee therefor.

This covers the sample referred to in the certificate of analysis, which is returned herewith.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE BOARD OF EDUCATION—CERTAIN POWERS NOT
VESTED IN

March 26, 1929.

Dear Sir:

Pursuant to the suggestion made that I state my views on the subject of whether or not Section 3 of Article XII of the Constitution of the State of Florida vests in the State Board of Education the power to remove members of the Board of Public Instruction of Duval County upon complaints, which have been filed with the State Board of Education, I beg leave to advise that, in my opinion, the term "subordinate school officer" as used in Section 3 of Article XII of the Constitution of this State is not intended to apply to nor include members of the County Boards of Public Instruction elected by the people of the several counties under Section 252 (217) Compiled Laws of 1927, and commissioned by the Governor of the State as county officers. I am, therefore, of the opinion that the State Board of Education is without jurisdiction to entertain the complaint or grant the relief prayed, but that the power so to do is vested solely in the Governor and Senate under Section 15 of Article IV of the Constitution.

In connection with the consideration of this matter, I have before me the very able brief on the subject, which has been prepared by Messrs. Lucien H. Boggs, Raymond D. Knight, Thomas B. Adams, Fred B. Noble, and William T. Stockton, members of the Jacksonville bar, who argue in support of the asserted jurisdiction of the State Board of Education in this matter.

My view is that members of the Boards of Public Instruction, who are elected under Section 252 (217) Compiled Laws of 1927, by the people of the counties, and who are commissioned by the Governor in like manner as other local officers are county school officers and not subordinate school officers, the latter term having reference to officers in the schools, who serve therein subordinate to the supervising control of the State Board of Education.

Under Section 523 (447) Compiled Laws of 1927, each Board of Public Instruction is made a body corporate and is given power to acquire and hold real and personal property, receive bequests and donations, and perform other corporate acts for educational purposes. It is also provided that the title to the school property of the county shall be vested in them and their successors in office, and it is required that they derive their title by election by the people of the county which they serve. In all the cases which have arisen in the past involving complaints against members of the Board of Public Instruction, no contention has ever before been made that such members of the Board of Public Instruction were subordinate school officers subject to removal by the State Board of Education under Section 3 of Article XII of the Constitution. On the contrary, in those few instances where removals of the members of Boards of Public Instruction have been accomplished, they have been carried out through the exercise of the power given the

Governor under Section 15 of Article IV. In view of these circumstances and notwithstanding the great respect that I have for the legal ability of those members of the Bar, who contend otherwise, I would respectfully suggest that the State Board of Education decline to take jurisdiction of or act in regard to the petitions asking for the removal from office of W. F. Bunch and J. C. Coppedge, Sr., as members of the Board of Public Instruction of Duval County, Florida, unless it shall have first been judicially determined that the State Board of Education has power to act in the premises. I would further suggest that in view of the right given the Governor under Section 13 of Article IV of the Constitution to request an opinion interpreting the Constitution, insofar as it affects the executive powers and duties of the Governor, that the Governor be requested by the other members of the State Board of Education to seek the written opinion of the Justices of the Supreme Court on this subject, in order that it may be authoritatively and expeditiously determined whether or not the Governor alone or the State Board of Education should exercise jurisdiction of the complaint, which has been filed.

That the complaint is of serious nature and deserves a decision on the merits either by the Governor or the State Board of Education is attested by the fact that over five thousand citizens of Duval County have signed the petition bringing the complaint to the attention of the authorities for action and by the many prominent and interested members of the Bar of the locality affected, who have made arguments and otherwise stated their positions, either for or against the petition, but so long as there is a question about who has jurisdiction in this matter, no decision rendered either by the Governor or the State Board of Education will likely be heeded by the affected parties until after the result of litigation over the right to exercise the power of removal, if it is exercised, and for this reason, I think that the Governor should be requested to secure an opinion of the Supreme Court on the matter.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY SCHOOL BOARD—NOT AUTHORIZED TO APPOINT
SCHOOL ATTENDANCE OFFICER

July 9, 1929.

Dear Sir:

The Supreme Court has recently held that a School Attendance Officer is an Officer in the purview of the Constitution and cannot be appointed by a County School Board.

There being no authority for such appointment by the County School Board there is likewise no authority for paying any salary therefor.

In my opinion, it is contrary to public policy for a School Trustee to be a School Teacher while holding such office.

Yours very truly,

FRED H. DAVIS, Attorney General.

FOREIGN CORPORATIONS—QUALIFICATION REQUIRED BEFORE
SCHOOL BOOK CONTRACT AWARDED

January 20, 1930.

Dear Sir:

Section 6026, Compiled General Laws, provides that no foreign corporation shall transact business in the State of Florida until it shall have filed in the office of the Secretary of State a duly authenticated copy of its Charter and shall have received from him a permit to transact business in Florida.

This law applies to all corporations except those who were transacting business in Florida on June 1st, 1907. My attention has been called to the fact that some of the foreign corporations who have been awarded contracts for school text books were not doing business in Florida on June 1st, 1907, and that they have failed to comply with the provisions of the laws of Florida requiring them to file their Charter in this State, and pay the fees fixed by law.

I am calling this matter to your attention in order that you may communicate with all companies prior to the time of execution of school book contracts, pursuant to the recent adoption, in order that such foreign corporations may qualify in accordance with the Florida statutes, as otherwise their making of contracts in this State would be contrary to law.

Any foreign corporation which is not qualified and which is not exempt from qualifying because it was doing business in Florida on June 1st, 1907, should communicate with the Secretary of State, if it desires to comply with the Florida law. The Secretary of State will advise as to the details which should be observed and the fees which should be paid in the premises.

Yours very truly,

FRED H. DAVIS, Attorney General.

BOARD PUBLIC INSTRUCTION—SCHOOL TRUSTEES—POWERS
AND FUNCTIONS OF

November 19, 1930.

Dear Sir:

Answering your request of November 1st for my opinion with reference to certain phases and functions of the trustees of a special tax school district in their relationship to the powers exercised by the board of public instruction of the county, I beg to advise as follows:

1. Section 716, Compiled General Laws, specifically provides that a special tax school district tax which has been set apart by the board of trustees for the payment of teachers shall not be subject to requisition for any other purpose by the trustees. This Section also provides that all special funds collected within a school district shall be disbursed solely for school purposes within the district for which the taxes were collected upon the recommendation of the board of trustees.

Section 715 provides that payment of teachers' salaries shall be made to the teachers upon the order of the county board of public instruction based upon reports approved by the trustees. A county board of public instruction has no right to disburse any special tax school dis-

strict funds except upon the requisition of the trustees of the special tax school district or upon bills approved by the trustees. The reason for the existence of the trustees is to see that special tax school money is properly applied, and to this end they are given the power to approve and disapprove expenditures. At the same time, the trustees have no power to spend money, but can only approve the expenditures of money when authorized by the county school board. Their power is really a power of veto only.

2. The annual budget filed on or before July 1st as required by Section 712 confers no authority on the county school board to disburse special tax school district moneys without the requisition or approval of the trustees.

3. If the county school board is using special tax school district money without the approval and against the will of trustees of the special tax district in which the money is raised, the remedy for such situation is either to enjoin the school board or report the matter to the Governor who has power to deal with the situation presented. The State Superintendent of Public Instruction has no jurisdiction to pass on a matter of this kind.

4. If the trustees have committed the county board of public instruction to disburse special tax school district funds without taking any steps to stop it, it is probable that there is no remedy by which the board can be compelled to replace the money, even though it was unlawfully spent.

5. You state that the school board paid Carrabelle teachers only eighty percent of their last month's salary, but paid Apalachicola teachers all of their salary. Insofar as the county school funds are concerned, the county school board has the right, if it wishes to do so, to make a partial payment of this kind, where the money is insufficient to pay all claims in full, but insofar as special tax school district money is concerned, such school district money cannot be used for paying any teachers except the teachers of the district wherein the money is raised, even with the consent of the county school board and the consent of the county trustees as well.

The Constitution requires that special tax school district money shall be used solely in the district.

Trusting this answers your several questions, I am,

Yours very truly,

FRED H. DAVIS. Attorney General.

XIII.

OPINIONS—SEMI-OFFICIAL

STATE OFFICERS.

The following are a few of the opinions rendered by this office to the various State Attorneys, State boards and commissions, which may be of interest to the public generally.

OKEECHOBEE FLOOD CONTROL — DISTRICT AUTHORITY OF
COMMISSIONERS TO MAKE TEMPORARY LOANS OF
FUNDS TO EVERGLADES DRAINAGE DISTRICT.

May 21, 1930.

Dear Sir:

From the facts submitted to me, it appears that the Everglades Drainage District has an outstanding floating obligation of \$100,000 which is past due and for which immediate payment is required in order to protect the credit of said district. It appears that the Everglades Drainage District is without funds with which to meet said obligation but that the Okeechobee Flood Control District has on hand funds which would be available to be used for discharging the obligation providing a legal way can be found by which the commissioners of Okeechobee Flood Control District can lend funds to the Everglades Drainage District.

In my opinion the acts of the Legislature creating the new Okeechobee Flood Control District and the new Everglades Drainage District should be construed as being in *pari materia*, (See *Amos vs. Mathews*, 126 Southern 308) and should be construed as having for their object the accomplishment of the same purpose in general.

It is manifest from an examination of the Okeechobee Flood Control District act that a substantial portion of the resources formerly a part of the Everglades Drainage District have been taken away from the Everglades Drainage District and placed in the Okeechobee Flood Control District. Insofar as the taking away of such resources might impair the obligation of the Everglades Drainage District on outstanding debts, the terms of the Okeechobee Flood Control District act will have to yield to the Everglades Drainage District act. It appears that the \$100,000 which is sought to be paid was borrowed by the Everglades Drainage District to meet obligations arising out of interest coupons due on outstanding bonds which had been issued prior to the creation of the Okeechobee Flood Control District.

It seems to me to follow as the necessary implication that in view of the inter-relationship between these two districts and the fact that they constitute a scheme of plan for accomplishment of one and the same general purpose that there is a necessarily implied power, even if it should be admitted that such power is not actually expressed to the effect that the Okeechobee Flood Control District has authority to co-operate with the Everglades Drainage District by lending its funds to the

Everglades Drainage District for the purpose of protecting its credit and preventing a default in its obligation.

I therefore give it as my opinion that the Okeechobee Flood Control District has authority under the law to make a loan of its fund to the Everglades Drainage District taking the obligations of the Everglades Drainage District therefor, insofar as the loan of such funds is required to be made and is made for the purpose of protecting the credit of Everglades Drainage District and preventing a default in its obligations.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE ADJUTANT GENERAL.

MILITIA—AUTHORITY OF SHERIFF TO CALL OUT.

July 30, 1930.

Dear Sir:

Some time ago we discussed the above subject and you asked me to look up the law in same and send you a citation of the statute in order that the statute might be included in the publication of your military code. I am, therefore, quoting to you Section 2858 of the Compiled General Laws, which reads as follows:

"May raise militia with advice of County Judge—Whenever considerable opposition shall be made against the Sheriff, in the discharge of his duty, or there shall be reasonable ground of suspicion that considerable opposition will be made, he shall have power, with the advice of the Judge of the County Court, to raise the militia of the county, or so many of them as such Sheriff and Judge of the County Court shall judge necessary to remove opposition."

Under the Constitution and Laws of Florida the National Guard is a part of the militia of the State and, therefore, under the above Section the Sheriff in the discharge of his duty with the advice of the Judge of the County Court, or County Judge, has the power to call out the militia of the county for the purpose of helping him enforce the law. However, when the militia is called out under Section 2858 without the concurrence of the Governor or Adjutant General there is no requirement for paying the militia for services rendered out of state appropriation and in all such cases the expense of calling out the militia must be borne by the county and the county is required to pay the same. See *Rushton vs. State*, 75 Fla. 422; 78 Southern, 345. In the *Rushton* case last quoted the Supreme Court held as follows:

"The services rendered by the organized troops of the state in the aid of the civil authorities of a county in enforcing law and order in the county at the request of the county authorities, is for a county purpose, and payment therefor by the county does not violate the organic provisions for a uniform and equal rate of taxation or the Articles of the Constitution relating to the militia."

The *Rushton* case was a case where the National Guard from

Hillsborough county was ordered into Manatee County upon the request of the Sheriff of Manatee County to protect a negro charged and convicted of rape until after his execution in due course of law. This case is probably familiar to you, as it appears that you were one of the plaintiffs in the suit, the title of the case being H. G. Rushton, et al, County Commissioner of Manatee County vs. The State of Florida, ex rel, Vivian Collins, et al.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE ATTORNEYS.

STATE ATTORNEYS—GAMBLING—VIOLATION OF LAW.

February 3, 1930.

Dear Sir:

Your letter of the 22nd ultimo, the receipt of which has been acknowledged, has been referred to me for consideration of the questions involved and reply to your requests.

Section 5029, Compiled General Laws of Florida, provides for the abatement of nuisances as defined in Section 7832.

Section 7832 provides that whoever shall erect establish, continue or maintain on or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community or become manifestly injurious to the morals and manners of the people as described in Section 7817 * * * shall be deemed guilty of a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are also declared a nuisance, and all such persons and places shall be abated and enjoined as provided by law.

Section 7817 provides that all nuisances that tend to annoy the community or injure the health of the citizens in general or to corrupt the public morals shall be indictable and punishable as therein provided.

I notice from your letter in detailing the operations conducted at Pompano by the East Coast Jockey Club, Inc., and others, that one Mr. Anderson, a lessee of a number of horses competing in the races, and also a sub-lessee of a portion of the premises used in the operation of the race track, sold and assigned to various persons' interests in the earnings of the horses leased, without reserving or retaining for himself any interest in such earnings, and that the entire purses collected by him as the lessee of certain of the horses were distributed and paid to those who had purchased interests in the earnings of the horses. In other words, it appears from your statement of the operations that Mr. Anderson, after selling what are termed interests in the earnings of the horses, thereupon became the stakeholder of such funds without himself having any interest therein.

It occurs to me that this statement of the operations, as detailed by you, brings the situation within the case of Reinmiller vs. State, 111 So. 633. In that case, as it appears from the facts stated in the opinion, persons desiring made deposits of money which was called by the association an investment in the earnings of a certain dog, but which the Court said was not true. At each booth one might purchase tickets at two dollars on any dog. When the race was over, a certain percentage was

taken down by the Association and the balance divided equally between those who picked the winner, while others who contributed to the proceeds of the so-called investment received nothing. The Court held that that state of facts could not be termed an interest in the dog or an interest in the earnings of the dog, but that it was plainly the wagering of money upon the result of the contest of speed of dogs, which contests were conducted by the Association.

In further discussing the case the Court said:

"It cannot be denied that whoever goes to the booth and buys one of these so-called 'investment' certificates thereby stakes the price of the ticket, to-wit, two dollars, that the dog on which he has bought the ticket will win the race. He has staked that two dollars against a proportionate part of whatever amount others may in like manner place on some other dog in that same race. Therefore it must follow, under the Statutory definition as contained in the above quoted Section of the Statute, persons making such so-called 'investments' are guilty of gambling, and that such gambling is shown by the evidence in this case to have been done in a 'booth' or 'place' provided and maintained by the accused and his associates for that purpose."

In the case just quoted from the parties who staked money bought tickets for two dollars. In facts stated in your letter, it does not appear in what manner Anderson sold and assigned interests in the earnings of the horses leased by him, but regardless of just how this was done it occurs to me that the facts are practically the same as stated in the opinion quoted from. And if the facts stated in the opinion in Reinmiller vs. State, supra, was gambling, it occurs to me that the facts stated in your letter likewise constitute gambling under the Statute.

If the facts stated in your letter constitute gaming or gambling, as defined and denounced by our Statute, then under the provisions of law the building, booth, tent or place where such operations were or are carried on, constitute a nuisance and are subject to abatement under the provisions of Section 5029.

In my opinion it is immaterial whether the gambling operations are carried on by the owner or lessee of the premises, if the operations come within the definition of gaming or gambling the Statute is applicable and the place subject to abatement by the Court.

These are my views of the law, based on the statement of facts contained in your letter, submitted to you for whatever weight they may have in your consideration.

Yours very truly,

H. E. CARTER, Assistant Attorney General.

STATE AUDITOR.

MOTOR VEHICLE COMMISSIONER—SALARY.

January 16, 1929.

Dear Sir:

Answering your letter of the 12th inst., I enclose herewith copy of the opinion rendered by me to Mr. Amos, dated January 1st, 1929, with reference to salary payable to the State Motor Vehicle Commissioner.

I think that all of the points you mentioned in your letter are covered by the opinion to Mr. Amos but to amplify what is said there, may I call to your attention the holding of the Supreme Court in *Curry v. Lehmann*, 55 Fla. 847, *Ex Parte Perry*, 71 Fla. 250; and *State v. Burr*, 84 So. 82, in which the supreme Court held that it is to be presumed that different acts of the same subject, passed at the same Session of the Legislature, are imbued by the same spirit and actuated by the same policy and that they should be construed by the light of each other; that where there is ambiguity or uncertainty in the meaning of words employed in the statute, the legislative intent should be ascertained by consideration of the entire Act and all others in *pari materia* and in so doing appropriate effect should be given to all the material portions of the Act so as to carry out and effectuate in the highest degree the intention of the law-makers.

Based upon these rules of statutory construction, I construe Chapter 12278 as being imbued with the same spirit and actuated with the same policy as the many other laws passed at the 1927 session of the Legislature, which evidenced an intent to raise—not lower—compensation of public officers; and construing the same in that light, as the Supreme Court says such Acts must be construed, I reach the conclusion that the language of Section 4, Chapter 12278, which says it is not intended by that Act to "interfere with" the salaries fixed by any Act of the 1927 Legislature, whether inconsistent with the Appropriation Bill or not, to mean that the words "interfere with" should be construed as having the effect of obstructing or prohibiting the payment of a higher salary rather than as a limitation to a lower salary when a higher salary is fixed in the General Appropriation Bill.

In short, the Legislature said the salaries fixed in the General Appropriation Bill should be the salaries to be paid but if the effect of the General Appropriation Bill is to cut down, or, as the statute says, "interfere with", a higher salary, in such event the higher salary as fixed by separate law should prevail over the General Appropriation Bill.

I think the Journal, the printed laws and the echoes of the recent political campaign sufficiently demonstrate beyond any reasonable doubt that if we are going by the legislative intent of the 1927 legislature no one can accuse that particular Legislature of having any intent—legislative or otherwise—to cut anyone's compensation.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE BOARD OF ACCOUNTANCY

ACCOUNTANTS—PARTNERSHIP NOT AUTHORIZED TO PRACTICE
UNLESS MEMBERS ARE LICENSED.

January 2, 1929.

Dear Sir:

I have a request under date of December 31st, from Hon. Geo. H. Ford, former Chairman of the State Board of Accountancy, requesting my opinion as to the status of a partnership composed of three persons, who

are doing an accountancy business, only one of the partners being a licensed public accountant under the 1927 Accountancy Act.

My opinion about the matter is that the Accountancy Law contemplates a personal license to individuals and a personal qualification by individuals, and while partnerships of licentiates may be formed and they may engage in the work of accountancy as a joint enterprise, yet at the same time there appears to be no more authority to licensed accountants to associate with him persons who have no license to practice accountancy and then conduct a partnership as if all persons were licensed any more than there would be authority for attorneys or physicians to associate with laymen and engage in the practice of medicine or law without all of the partners so engaging in such practice being licensed under the statutes relating to the particular professions.

Trusting this answers the inquiry of the 31st ult., I am

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANTS—MEMBERS OF PARTNERSHIP NOT AUTHORIZED
TO PRACTICE UNLESS LICENSED.

February 28, 1929.

Dear Sir:

Your letter of January 31st was misplaced and has just come to my attention.

It appears to me that the same rule will govern persons who practice accountancy that govern the practice of any other profession, as it was the intention of the Accountancy Law to put the practice of accountancy on a professional basis.

Where several persons form a partnership for the purpose of practicing a profession even though one of the partners should reside outside of the State and do nothing toward practicing in the State as far as he is individually concerned, it is nevertheless required that all the partners be licensed as it is the holding out to the public of a certain association of individuals as being qualified to practice a profession rather than the actual practice of such profession which constitutes the gist of the requirement of the law relating to licenses.

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY ACT—WHEN BOARD NOT AUTHORIZED TO REVOKE
CERTIFICATE.

March 19, 1929.

Dear Sir:

Owing to my absense from the City, I have been unable to give prompt attention to your request of March 1st, for my opinion in regard to certain phases of the State Accountancy Law.

In my opinion, there is nothing in the Act which will authorize the State Board of Accountancy to revoke a certificate for failure to comply with certain provisions of the law, with reference to securing an annual license to practice, as provided in Section 9 of the Act. The phrase "guilty of negligence or wrongful conduct" as used in Section 5 of the law, has reference to negligence or wrongful conduct committed by a licensed

accountant in his relations with his clients and does not cover a failure to take out a registration card annually as provided by Section 9 of the Act. This section specifically provides that failure to secure a registration card in any year does not disqualify a holder from securing a card for any future year, which indicates that the intention of the law is that the failure to secure an annual registration card is to operate only as a suspension of the right to practice Accountancy so long as the individual Accountant remains in default by not having his proper registration card. It seems to be clear that there is nothing in the Accountancy Act, which will authorize the Board to suspend or revoke a certificate merely for failure to take out an annual registration.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE DRAINAGE ENGINEER .

EVERGLADES DRAINAGE DISTRICT — PAYMENT OF CLAIMS AGAINST COMMISSIONERS ACCOUNT OBLIGATIONS INCURRED BY FIRE CONTROL BOARD

December 18, 1929.

Dear Sir:

I return herewith file submitted to me under date of November 18th, in regard to the above matter.

It appears to me that any claim which was validly incurred by the recently abolished fire board would be a proper claim to be paid out of the funds of that Board which came to the Commissioners of Everglades Drainage District when the Board was abolished. At the same time, no claim should be paid out of such funds, unless it is made to appear that the bill in question was duly authorized by the Fire Control Board prior to its being abolished, which authorization should be made to appear by exhibiting a certified copy of the minutes of the Fire Control Board, or a copy of some resolution adopted by it incurring the obligation. Boards are only authorized to act in their collective capacity as such, and the evidence of their action is to be found in the record of their proceedings. No member of a Board has a right to bind the whole Board in the absence of some express authority given him by the whole Board, permitting him to do so, or unless the Board later ratified and adopted the act of a single member. See *Kirkland vs. State*, 70 Florida 534. *Nassau County vs. Downie*, 18 Fla. 171.

Yours very truly,

FRED H. DAVIS, Attorney General.

TRUSTEES INTERNAL IMPROVEMENT FUND—AUTHORITY TO BORROW MONEY AND INCUR OBLIGATIONS.

June 24, 1930.

Dear Sir:

This is in answer to your inquiry of June 23rd on the above subject.

In my opinion the trustees of the Internal Improvement fund are authorized by law to borrow money on their note and to pledge the assets and resources of the trustees as security for the repayment of the money

so borrowed. The money is to be used for the purposes of the trustees as provided by law.

I am further of the opinion that the trustees for this purpose may join in the execution of a note with the Board of Commissioners of Everglades Drainage District or may execute a note signed solely by the trustees. I am also of the opinion that under Section 1419, Compiled General Laws, the trustees of the Internal Improvement fund are authorized to make loans and advances to the Board of Drainage Commissioners for the purposes authorized by law.

Section 1417, Compiled General Laws, provides that the party or parties making a loan to the trustees of the Internal Improvement fund will not be bound to see to or be affected by the application of any money loaned.

In the case of *Martin vs. Dade Muckland Company*, 116 So. 449, the Supreme Court held that while the State of Florida as such could not be obligated on any form of note or bond, that this did not prevent a pledge under statutory authority of specific assets belonging to the trustees of the Internal Improvement fund for the purpose of repaying obligations incurred either by the trustees or by the Board of Commissioners of Everglades Drainage District.

I am therefore of the opinion that there is no constitutional invalidity existing in regard to the statutes which authorize the trustees of the Internal Improvement Fund to borrow money and to provide for the repayment of the money borrowed.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE BOARD EXAMINERS OF NURSES

NURSING—UNLAWFUL TO PRACTICE WITHOUT LICENSE—PROCEDURE FOR ENFORCING LAW.

January 20, 1930.

My dear Mrs. Benham:

Section 3516, Compiled General Laws, makes it unlawful for any person to practice nursing as a trained nurse without having a proper license from the Florida State Board of Examiners of Nurses so to do. but I find nothing in the statute which places the duty of enforcing this law upon the members or upon the secretary of the Florida State Board of Examiners of Nurses. The procedure for enforcing this law contemplates that the violation, if any, be called to the attention of the local Prosecuting Attorney of the County where the violation occurs, and that such Prosecuting Attorney institute the necessary prosecution. The State Board of Health also has authority to provide for the enforcement of the registration of nurses under another provision of the law. See Section 3398, Compiled General Laws, and following sections.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE BOARD OF HEALTH

PHYSICIANS—REQUIRED TO REGISTER WITH BUREAU OF VITAL STATISTICS.

January 22, 1929.

Dear Sir:

Physicians, surgeons, osteopaths, natureopaths, midwives or other persons practicing medical or material healing arts, who fail to comply with the provisions of Section 3398 to 3403, Compiled Laws, 1927, relating to registration of all persons practicing the medical or material healing arts is subject to a prosecution for such failure but the failure itself will not prevent the practitioners from complying with the same and thereby avoiding liability for unlawful practice in the future.

I am, therefore, of the opinion that if an individual has failed to register for 1928 although engaged in practice, he is guilty of a violation of the statute, which may subject him to criminal prosecution but yet at the same time there is nothing in the statute which authorizes the withholding from him of a 1929 registration or in requiring him to register for 1928 before he is authorized to register for 1929.

The purpose of the provisions of this Act as has been previously pointed out is to furnish a current record of those presently engaged in practice for the particular year in question.

There is nothing in the Act which prohibits a physician who practiced in 1928 without registering from now filing his registration for the year 1928 in order to have recorded the fact that he did practice during 1928 but such filing subsequent to the time fixed in the statute will not by itself exempt him from liability which he has already incurred from the practice without the proper registration.

Trusting this answers your request for my opinion in the premises dated January 17th, I am

Very truly yours,

FRED H. DAVIS, Attorney General.

BIRTH CERTIFICATES—BOARD NOT AUTHORIZED TO ALTER.

February 7, 1929.

Dear Sir:

I have your inquiry of January 30th, in which you ask my opinion as to whether or not your Department should accept a birth certificate for an illegitimate child where such certificate shows on the face some man's name as its father in view of the law to the effect that the bastard child is presumed to be nullius filius, and therefore has neither father nor mother.

In my opinion the function of the Bureau of Vital Statistics in receiving, accepting and filing birth certificates, death certificates, etc., is to act as the custodian of such records and that their powers do not extend to the amendment, alteration, supervision, approval or rejection of any certificate or contents of any certificate tendered to them.

In short, I think that when a birth certificate is filed it should be received and filed as made out by the person filing the same and the re-

sponsibility for changing thereof should be allowed to rest upon the person who gives it to be filed.

I do not think that such a certificate would be admissible in any suit at law to prove the parentage of a child where that fact was in dispute, especially in a bastardy case in an attempt to prove who the father of the child was.

While birth certificates are admissible in evidence to prove the fact of birth and the date of the birth other data appearing thereon is immaterial and has not weight as evidence.

My advice would be to file birth certificates as tendered and let other interested parties procure alteration of certificates, if they deem them untrue or detrimental.

Very truly yours,

FRED H. DAVIS, Attorney General.

HOTELS, RESTAURANTS, ETC.—EXAMINATION OF HANDLERS OF FOOD—PHYSICIAN COMPETENT TO SIGN HEALTH CERTIFICATE

March 29, 1929.

Dear Sir:

I am sending you, under separate cover, copy of the Laws of Florida relating to the Hotel Commission, which gives the regulations relating to the examination of handlers of food in hotels, restaurants, eating places, etc.

In an opinion rendered by this office on January 21, 1928, the Hotel Commission was advised that health certificates must be signed by such physicians as would be authorized to make a diagnosis of and treat such contagious and infection diseases under the laws of this State. The purpose of the health certificate is to ascertain whether or not the person examined has a communicable disease. Only certain classes of physicians are entitled to diagnose, and treat communicable diseases. Naturopaths are not authorized by law to diagnose and treat communicable diseases and, therefore, a certificate made by a naturopath might be properly rejected for that reason, although the matter as far as local regulations of your city are concerned, is entirely up to your Department. You will be authorized to accept the certificate of any physician, naturopath or otherwise, which you feel satisfied has complied with your local regulations. But only those physicians, who are authorized to diagnose and treat communicable diseases would have the right to require that they be recognized as physicians competent to sign a health certificate.

Trusting this answers your letter, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE HEALTH DEPARTMENT—PRIVILEGE, STATUS, ETC., UNDER FLORIDA LAWS

October 21, 1930.

Dear Sir:

I can best answer your letter of October 10th requesting my opinion as to whether or not an osteopath is permitted by Florida laws to pre-

scribe drugs, practice obstetrics, gynaecology and surgery, by quoting to you the provisions of Section 3429, Compiled General Laws of Florida, which reads as follows:

"Osteopathic physicians and surgeons shall observe and be subject to all State and municipal regulations relative to reporting births and deaths and all matters pertaining to the public health, with equal rights and obligations as physicians of other schools of medicine, and such reports shall be accepted by the
of the departments to which the same are

Osteopathic physicians and surgeons licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine with respect to the treatment of cases or holding of offices in public institutions.

"It is the intent and purpose of this Chapter to grant to osteopathic physicians and surgeons the right to practice as taught and practiced in the standard colleges of osteopathy."

You will notice that the last clause of this Section states that osteopaths have the right to practice their profession as taught in the standard colleges of osteopathy. Whether or not they have the right to perform surgical operations, practice obstetrics, etc., depends therefore upon whether or not such matters are embraced in the practice of osteopathy as taught in the standard colleges referred to. My understanding is that the osteopaths claim their practice embraces the items above mentioned, and if it does, then under the statutes of Florida they have the right to do those things.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE BOARD OF MEDICAL EXAMINERS

STATE BOARD MEDICAL EXAMINERS—AUTHORIZED TO HOLD SPECIAL EXAMINATION.

January 25, 1930.

Dear Doctor:

This will acknowledge receipt of your letter of January 21st requesting my opinion on the above subject.

Section 3407, Compiled General Laws of Florida, contains the following provision:

"Said Board shall hold two regular meetings each year, one in June and one in November, at some convenient place in the State and on such date as the Board may select, of which meetings notice shall be given by publication thereof once a week for four successive weeks in a newspaper of general circulation throughout the State. *Special or call meetings may be held at the discretion of the president.*"

I am of the opinion that the last sentence of the above provision, providing for special or call meetings of the Board to be held at the discretion of the president, contemplates that the president has authority to call such special or called meetings to conduct a special examination to

cover a situation like that mentioned in your letter, when the public interest requires it or where an emergency exists which warrants the Board in holding such special examination.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

MEDICAL PRACTICE—RIGHT TO PRACTICE MEDICINE IN STATE.

December 17, 1930.

Dear Sir:

Section 3408, Compiled General Laws, provides that any person wishing to obtain the right to practice medicine in this State "who has not heretofore been registered or licensed so to do" shall before it shall be lawful for him to practice medicine in this State make application to the Board upon such form and in such manner as shall be adopted and prescribed by the Board and obtain a license from the State Board of Medical Examiners so to do. Unless such person shall have obtained a license as aforesaid, it is unlawful for him to practice medicine in this State, and if he practices medicine in this State without first having obtained such license, he is deemed to have violated the law prohibiting the practice of medicine without a proper license.

It is therefore plain that if Dr. James W. Wilson of Frankfort, Kentucky, was lawfully licensed to practice and was practicing medicine in Florida when the medical practice Act of 1889 was passed that under the terms of that Act he became lawfully licensed to practice medicine in the State of Florida, and such right has never been abrogated or taken away from him by any subsequent law that I have been able to find.

Section 3398, Compiled General Laws, requires that every license to practice medicine shall be recorded in a book for that purpose in the office of the clerk of the circuit court, and also registered with the State Board of Health.

While Chapter 12005, Acts of 1927, makes no express reference to those physicians who were lawfully practicing in the State of Florida at the time the first medical practice act was passed it is evident from a consideration of all the statutes including the first medical practice act that there was no legislative intent in the enactment of the first medical practice act nor in any subsequent enactment, to exclude from practice any physician who was lawfully entitled to practice in the State of Florida at the time the first medical practice act was passed, whether he had a written certificate or license or not evidencing the same.

This view of the matter seems to have been recently affirmed by the Legislature in the passage of Chapter 14488, Acts of 1929, which required the State Board of Medical Examiners to grant to Dr. Butler O. Lewis of Jefferson County, Florida, a new certificate to practice medicine in the State of Florida in substantially the same form as one formerly held by him which was lost.

The Act of 1921 creating the State Board of Medical Examiners gave the Board broad powers and authorized it to make rules and regulations and to examine and pass upon the qualifications of applicants for the

practice of medicine in Florida, whether original practitioners or those who claim to be already licensed or entitled to practice under previous statutes or certificates.

If, therefore, the State Board of Medical Examiners finds it to be a fact that any particular claimant was lawfully entitled to practice medicine under the first medical practice act of the State of Florida and that he has not since forfeited such certificate in some manner provided by law, it is within the province of the State Board of Medical Examiners, if not its absolute duty, to make any investigation of such claim and make a finding as to the truth or falsity of same, in order that the person seeking to resume the practice of medicine in this State on the basis of a previous qualification which is alleged to be still in existence, may be able to obtain a proper certificate to that effect to be filed and recorded as required by Chapter 12005, Acts of 1927.

In this connection it must be borne in mind that the case of Dr. James W. Wilson referred to in your letter of November 28th is that of a physician who makes the assertion that he was lawfully entitled to practice medicine in the State of Florida at the time the first medical practice act was passed, and that such first medical practice act continued and recognized his right to practice.

A different situation is presented where the claim is based upon a right acquired to practice under some act where the presumption is that a written license of some kind was issued which the applicant is unable to produce. In any case where it appears that there was at one time a written license in existence under some law of the State, it is within the province of the Board to require that such license be produced as the sole evidence of its existence.

On the other hand, where the asserted right to practice medicine depends upon a state of facts as to which the presumption arises, that there was no record made at the time, then it is up to the Board to resort to such other evidence as may be sufficient to satisfy it of the truth of the claim.

Therefore if the State Board of Medical Examiners finds that Dr. James W. Wilson was practicing medicine in Florida when the medical practice act of 1889 was first passed, and was entitled to continue his practice under that Act, it is within its province to make a finding to that effect certifying that Dr. James W. Wilson is a legal practitioner of medicine of the State of Florida, which finding will be the equivalent of a license that is required to be filed and recorded by law.

Papers submitted in the matter are herewith returned.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE BOARD OF OPTOMETRY EXAMINERS

EYE GLASSES, SPECTACLES—UNLAWFUL TO PEDDLE.

March 11, 1930.

Dear Doctor:

Section 3496, C. G. L. of Florida, provides that it shall be unlawful

for an optometrist or *any* person to send a solicitor or agent from house to house for the purpose of selling spectacles or eye glasses or for himself to sell or peddle spectacles or eye glasses from house to house. This prohibition applies to registered optometrists, it apparently being the intention of the law that registered optometrists shall conduct themselves in a professional way and not become common peddlers of eye glasses.

Trusting this answers your letter of March 1st, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE BOARD OF PUBLIC WELFARE

STATE BOARD OF PUBLIC WELFARE—JURISDICTION AND DUTIES

April 2, 1930.

Dear Madam:

This is in answer to your letter of March 21st on the above subject.

There is not necessarily any legal connection between the definition of a dependent or delinquent child as used in Section 3684, Compiled General Laws, and that term as used in Section 4130, Compiled General Laws, relating to the State Board of Public Welfare. In my opinion, the words "afflicted, dependent or neglected or delinquent children" as used in Section 4130 refer to all children who are in fact within the language of the Statute, whether they would be subject to be called dependent or delinquent children under Section 3684 or not.

Sections 4130 and 3684 are two separate and distinct laws in no wise related to each other, and the definition of Section 3684 does not limit the application of Section 4130 in any respect. I think the jurisdiction of the State Board of Public Welfare under Section 4130 extends to private institutions caring for children whose parents voluntarily place them there, but who are unable to pay in full for their support. The purpose of the law was to have State investigation and control of institutions caring for children, who by reason of affliction, dependency, neglect or delinquency are necessarily being maintained in agencies or institutions out of the immediate control and supervision of their own parents.

The determining factor under the Statute is not whether the children are dependent upon the public for support, but whether or not the agency is a public or private agency in receiving and caring for children, who by reason of affliction, dependency, neglect or delinquency are required to be placed and kept in such an institution instead of being reared by their own parents. The fact that an institution is resorted to for the purpose of caring for the child is itself *prima facie* evidence that the child is at least a dependent or neglect child within the meaning of the Statute.

2. Maternity homes and maternity hospitals. I think the term maternity home and maternity hospital as used in Section 4131, Compiled General Laws, means a maternity home consisting generally of a place where unmarried mothers are cared for for a rather long period of time, together with their babies, and that a maternity hospital may

be merely a maternity ward of a hospital which cares mainly for patients able to pay for the cost of the care and where in general the babies do not become dependent upon the public as in the case of an illegitimate child needing protection.

In other words, I think the Board has correctly interpreted the Statute as stated in your letter.

3. Boarding homes for Infants. I do not think that a home in which a mother is living with her infant under three years of age and paying board for herself and child is subject to license as a boarding home for infants under Sections 4130 and 4131. I think a boarding home for infants under three years of age means a place where infants alone are boarded separate from their mothers or at least not directly under the jurisdiction of their mothers.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE EDUCATIONAL SURVEY COMMISSION

EDUCATIONAL SURVEY COMMISSION — APPOINTMENT OF — POWERS AND DUTIES—APPROPRIATION—DEFRAY EXPENSES

August 2, 1929.

Dear Sir:

Chapter 12011, Acts of 1927, Laws of Florida, is an Act to authorize the appointment of an Educational Survey Commission of the State of Florida, to define its powers and duties, making an appropriation to defray its expenses, and otherwise providing for the accomplishment of the purposes for which the Commission was created.

The requirements of the Act are that the Commission shall make a complete survey of the school system of the State, and report its recommendations to the Legislature. The sum of \$50,000 is appropriated for the purpose of carrying out the provisions of the Act. While the Act requires that the Commission shall make a report to the Legislature of 1929, there is nothing in the Act which limits the life of the Commission to two years.

I am therefore of the opinion that the Commission continues to exist as a legal commission, with full power and authority to act as such, until the work for which it was created has been fully accomplished, notwithstanding the fact that the Commission has made a report to the 1929 Legislature as required by the Act. Under this interpretation any unexpended balance in the original \$50,000 appropriation provided by Section 5 of the Act, would necessarily remain available to pay legitimate expenses of the Commission, as authorized by law, until the amount appropriated has been exhausted.

Yours very truly,

FRED H. DAVIS, Attorney General

STATE FORESTER

STATE FORESTER—POWERS.

March 6, 1929.

Dear Sir:

Section 5, Chapter 12283, Acts of 1927, provides that among the duties of the State Forester shall be the enforcement of laws pertaining to forests and woodlands, to cause prosecution for any violation of said laws and to have charge and full authority of law with the immediate direction and control of all matters relating to forestry.

Under this provision of the law I am of the opinion that it would be your duty to investigate and prosecute any case in which a violation of the law was involved relating to trees or forests except cases of mere private timber trespasses, which I think should be handled by the parties interested.

This is in answer to your inquiry of the 23rd instant.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE GAME AND FRESH WATER FISH COMMISSION

VETERANS EXEMPTIONS—GREEN AND DRY FUR DEALERS
LICENSE

February 14, 1929.

Dear Sir:

Chapter 12110, Acts 1927, provides an exemption for disabled war veterans in regard to the payment of occupational license taxes.

It appears that by Section 64 of Chap. 11838, Acts of 1927, known as the State Game Law, a special occupational license tax of \$10 per annum is levied against dealers or buyers of green or dried furs taken from fur-bearing animals.

I am further of the opinion that the exemptions provided for by Chapter 12110 is applicable to the particular license required by Section 64, Chapter 11838, Acts of 1927, and that the exemption should be allowed when properly applied for and disability proved.

Yours very truly,

FRED H. DAVIS, Attorney General.

REMOVAL OF DESTRUCTIVE FISH FROM WATERS—DELEGATION
OF POWERS TO ANOTHER

March 12, 1929.

Dear Sir:

I have your letter of even date wherein you state that Section 6, Chapter 11838, Acts of 1927, authorizes the State Game Commissioner to use seines, nets or other devices for removing from the fresh waters of the State fish that are destructive to the game fish, and note your

inquiry if this authority can be delegated to an individual or group of individuals, to which I answer in the negative.

In answer to your second question, I beg leave to advise that I do not find any authority for the possession or sale of cat fish or other enemies of game fish caught during the closed season.

Yours very truly,

FRED H. DAVIS, Attorney General.

GAME PRESERVES—TRESPASSING ON—PROSECUTION FOR—
CARRYING GUN, ETC.

April 13, 1929.

Dear Sir:

I have your letter of April 5th, in which you ask my opinion as to whether or not a prosecution may be maintained under Section 8 of Chapter 11838, Laws of Florida, Acts of 1927, which says:

"Any person found in or on any State Game Refuge, or breeding ground for game, fresh water fish, non-game birds or fur-bearing animals, with gun, fishing tackle, traps, nets or other devices for taking game, non-game birds, fresh water fish or fur-bearing animals shall be guilty of a violation of this Act."

Section 5 of the Act authorizes the establishment of "breeding grounds" for game. Such breeding grounds, when established, are in substance and effect the property of the State for the purpose for which they are established, as much so as any other property, and the State can lawfully pass laws, prohibiting the trespass upon that which belongs to it, by either all, or any class of persons.

Section 8 of the Act undertakes to prohibit any person from going on the breeding ground for game, except on condition that he not take thereon with him any gun, fishing tackle, traps, etc. The gist of the offense is the unauthorized trespass upon the game preserve, rather than the bare fact that the person in question carries a gun, etc. The prosecution provided for is not merely for carrying a gun, etc., but is for carrying a gun upon State property, which the defendant is forbidden to enter, except on condition that he leave his gun, etc., elsewhere. Thus construed, I think the statute in question may be enforced for the protection of breeding grounds established under Section 5 of the Act, and that under Section 8 of the Act, a prosecution may be maintained against any person found on any State Refuge or breeding ground for game, fresh water fish, non-game birds or fur-bearing animals, with gun, fishing tackle, nets, etc.

It will be noted, however, that the trespass in question must be committed against a "State" game refuge or "State" breeding ground.

Yours very truly,

FRED H. DAVIS, Attorney General.

FRESH WATER FISH DEALERS—SPECIAL LICENSE

May 17, 1929.

Dear Sir:

I beg to answer your inquiry of May 14th as follows:

Section 32 of Chapter 11838, Acts of 1927, provides for a Special

License Tax upon Fresh Water Fish Dealers. The question of whether a person is dealing in fish depends upon the facts of the particular case, and this question will have to be determined on the basis of whether or not fish are caught and shipped for the purpose of being sold or offered for sale. If you find that a person, acting under a license obtained under the provisions of Section 21 of Chapter 11838 is transporting out of the State during the open season an unlimited number of good fish legally caught from the fresh waters of this State, either for the purpose of sale in shipments by the barrel or half-barrel or in bulk, you should exact from such person the payment of a fresh water fish license under Section 32 of the Act.

Section 32 of the Act defines a Fish Dealer as one who either sells fish or who ships fish by the barrel or half-barrel or who ships fish in bulk.

In any case where fish are shipped in bulk or by the barrel or half-barrel, the presumption is that the person so shipping same is a fish dealer and he should be required to take out a license under Section 32 of Chapter 11838.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

LICENSE TAX—DEALERS IN HIDES AND FURS

January 16, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 14th on the above subject.

I find nothing in either Chapter 13644, which is the General Game Law and Chapter 14491, which is supplementary license law, which repeals the provisions of either of said laws, which prescribes amounts of license fees which must be paid by persons, firms and corporations dealing in hides.

The tax imposed by Paragraph (c), Section 13, Chapter 14491, is an occupational license tax for general revenue purposes on those persons, firms and corporations who operate in cities and towns.

The license imposed by Section 61, Chapter 13644, is a regulation charge rather than a revenue measure and applies to all dealers or buyers of alligator skins, or green or dried furs, regardless of whether they do business in town or out. The practical operation of the law is that dealers, who fall under Section 61, of Chapter 13644, and also under the provisions of Chapter 14491, will have to pay both licenses.

Yours very truly,

FRED H. DAVIS, Attorney General.

SEINING FOR MULLET—AUTHORITY TO PERMIT.

May 20th, 1930.

Dear Sir:

Section 24 of Chapter 13644, Acts of 1929 provides that by and with the consent of the County Commissioners, and with the consent of the State Game Commissioners certain nets may be fished in any of the

fresh waters of the counties "for such species of fresh water fish, except black bass, as in the judgment of the State Game Commissioner may be necessary to remove rough fish, or to *maintain a balance of desirable species of fish.*"

It does not appear to me that any authority is conferred by the above section of law to permit the seining of fresh waters for the taking of mullet, which as you state is not a fresh water fish. Neither is it a predatory fish, or a fish that is destructive to desirable species of fish in fresh waters. However, the power conferred includes the right to use means "to maintain a balance of desirable species of fish", which is a rather broad power and it is a matter of judgment for the State Game Commissioner to decide as to whether or not the removal of mullet might under such circumstances be necessary "to maintain a balance of desirable species of fish".

Trusting this answers your letter of May 12th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

DEER—KEEPING IN CAPTIVITY.

May 28, 1930.

Dear Sir:

This is in answer to your letter of May 27th, on the above subject.

In my opinion, when a fawn or deer is lawfully captured during the open season for same, it then becomes the personal property of the person who captures it, and then becomes the same as any other personal property, such as a cow or horse, so that the person lawfully in possession of the same has a right to keep it in captivity from then on, irrespective of any provision of the State Game Law. The State Game Law applies to animals and game which are commonly called *ferae naturae* and applies only to such animals and game while they are in a wild state and not reduced to the possession of any one.

Of course, if any animal is taken during the closed season, it is taken in violation of the law and the person who takes it acquires no right of property in the premises. Consequently, it is a continuing violation of the law if any such person keeps in captivity any animals which are unlawfully taken in the first instance.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

FRESH AND SALT WATER—DIVIDING LINE BETWEEN

June 5, 1930.

Dear Sir:

This refers to your letter of May 30th on the above subject.

There has always been a dispute as to where fresh water leaves off and salt water begins in our rivers. In order to settle this dispute the Legislature gave the Game Department and the Shell Fish Department the right to agree upon the line, and whatever line they agree upon and set is in the eyes of the law the proper line, unless it can be shown

that the power vested in them has been abused. In this respect the Commissioners act in the capacity of a surveyor who goes out and locates a land line. He might locate the line wrong but it stands until the Court sets it aside.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

HONORARY GAME COMMISSIONER—POWERS AND DUTIES OF

June 23, 1930.

Dear Sir:

Section 3 of Chapter 13644, Acts of 1929, provides that the State Game Commissioner and his duly authorized Deputies shall have the power throughout the State of Florida to enforce all laws relating to game, etc., to execute warrants, search warrants and otherwise serve processes required to be served in connection with the enforcement of the game law, and to make arrests of persons and conduct seizures of contraband property under the statutes. Section 3 also contains the following provision:

"The State Game Commissioner may appoint honorary game wardens who shall serve without compensation and who shall not be empowered to carry arms."

In my opinion, the reading of Section 33 of the law has entirely demonstrated that it was the legislative intent that honorary game wardens should possess the same powers, perform the same duties and enjoy the same privileges as any other Deputy of the State Game Commissioner, except receiving a salary and carrying fire arms. This means that honorary game wardens have power to make arrests, serve processes and otherwise exercise the same authority as regularly appointed game wardens under the statute.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

COURTS—RIGHT OF TO IMPOSE LESS THAN MINIMUM FINES

September 23, 1930.

Dear Sir:

In my opinion Section 70 of Chapter 13644 provides for a minimum penalty of \$10.00 in case of conviction for violation of the Game Act, and the Court has no authority to impose a fine of less than this amount. In cases where the Court feels that justice would be subserved by not imposing a fine, the Court would probably have authority upon request of the State Game Department to allow the withdrawal of the prosecution upon payment of the accrued Court costs in the matter. There is no power in the Court to indefinitely suspend its sentence, that is, not impose any sentence whatever by suspending it for an indefinite time. The Supreme Court has held that where a Court suspends sentence it must be limited to a definite time of suspension

after which the sentence must be imposed. See *Tenn vs. Wiggins*, 55 Fla. 203.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE HOTEL COMMISSION

APARTMENT HOUSES—LIABILITY FOR LICENSE OF PERSONS RENTING TO TENANTS

September 23, 1929.

Dear Sir:

Section 3353 of the Compiled General Laws as amended by Chapter 13659, Acts of 1929, reads in part as follows:

"Every apartment house, tenement house, boat, vehicle or other structure kept, used, maintained, advertised or held out to the public to be a place where living quarters, sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests, in which ten or more rooms are used for accommodations of such guests, but which does not maintain a public dining room or cafe in the same building in connection therewith shall, for the purpose of this article be deemed a rooming house and upon proper application the Hotel Inspector shall issue to said above described business a license to conduct a rooming house. Providing that nothing in this Act shall affect in any way the operation of fraternity or sorority houses, dwellings or clubs."

In view of this amendment to the statute, regardless of what may have been permissible in connection with the law prior to the amendment, it appears to me that where apartment or tenement houses are merely rented to tenants by landlords under like conditions to the rental of ordinary single houses to tenants by landlords, that such apartments and tenements rented as above do not fall within the provisions of the Hotel Commission Law requiring a license for same, and that the law cannot be enforced in such manner as to require the payment of a license on such apartment and tenements which are merely rented by a landlord.

The statute merely contemplates that apartment houses and tenement houses shall be kept, advertised or held out to the public where living quarters, or housekeeping accommodations are "supplied" for pay to transients or permanent guests or tenants. In this connection it will be noted that the word "furnished" which was originally used in Section 3353 has been changed in the amended statute of 1929 to the word "supplied." This change was significant, and it must now be held that the statute is limited to those places only which are so operated and held out to the public as to amount to the "supplying" of accommodations as a public service and not as a mere creation of the relationship of landlord and tenant.

Of course there will be many cases which will arise in this the Hotel Commission will have to determine as a question of fact in the

particular case where the proposition involved is a mere one of rental contract between landlord and tenant or the supplying of accommodations under circumstances analogous to the relationship of an Inn Keeper to the public.

I am of the opinion that where a house consists of one building containing an upstairs apartment, to which there is a separate entrance, and a downstairs apartment to which there is a separate entrance, each of which is rented by the owner to a separate tenant who furnishes and occupies the apartment as his permanent home for the time being, is not subject to the requirement of a license as a rooming house under the existing statutes. At the same time, where apartments, either singly or in multiple are not merely rented as residence property, but are held out or advertised to the public as accommodations which the public can obtain for such period of time as may be desired for a temporary place of residence while in this State, would be within the purview of the law, the question in each being one of fact for the Hotel Commission to decide within reasonable limitations. The distinction is that purely rental property is not subject to the Hotel Commission law.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE MOTOR VEHICLE COMMISSIONER

MOTOR VEHICLES—REGISTRATION OF TITLE OF CARS ABANDONED OR CONFISCATED IN NAME OF CITY OR COUNTY

February 27, 1929.

Dear Sir:

The Motor Vehicle Commissioner should not register any automobile as to title except upon proof of ownership in the person applying for registration.

Where a city or county authority claims to have acquired title to an abandoned car, some legal or other proceedings should be exhibited to your Department as evidence of what the title is and how said City or County acquired the same, or claims to have acquired same. If this is not done, registration of title in the name of such city or county should be refused until some evidence of title is shown.

There are express proceedings for disposition of abandoned or derelict property as well as for the forfeiture of property which is used in a violation of the law, and these should be followed.

Trusting this answers your inquiry of the 13th inst., I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 281
MOTOR VEHICLES—EXEMPTIONS—"FOR HIRE" LICENSE TAXES

February 27, 1929.

Dear Sir:

A portion of Section 1280 (1006 R. G. S.) Compiled Laws of 1927, reads as follows:

"For hire" as defined in this Chapter shall include all motor driven vehicles, or trailers hauled by a motor vehicle, in use for transporting persons, commodities or materials for compensation, or such motor vehicles as may be let or rented to another for a consideration; Provided, that motor vehicles temporarily used by farmers for the transportation of agricultural or horticultural products from farm or groves to packing houses or to points of shipment by transportation companies shall not be held to be operating for hire * * *

In order for a vehicle to come within the exemption set forth in the proviso of this Section as above stated, the motor vehicle in question must be used by a "farmer" and it must be used by him for the transportation of agricultural or horticultural products from farms or groves to packing houses, etc.

You will notice under the definition of a "for hire" vehicle a truck leased to a farmer to haul his commodities in would be deemed a "for hire" truck under this Section, and the purpose of the proviso was to allow a farmer to lease from his neighbors or from any other person a truck to be used in hauling his agricultural or horticultural products without making such leased truck subject to a "for hire" license.

There is no justification for extending the exemption further than its plain purpose and intent as several attempts have been made in the Legislature to extend the exemption and the Legislature has voted such attempts down, thereby indicating that the Legislature was satisfied to leave the exemptions limited to apply only to leased motor vehicles used by farmers.

Under the above Section of the law a farmer has no right to engage in a "for hire" transportation business without having a license therefor any more than any other person.

The language of the law is that motor vehicles "temporarily used" by farmers are exempt from the "for hire" license tax.

Under this language only automobiles which do not belong to the farmers but which they acquire a temporary use of by means of rent, contract or lease, are within the purview of the statute and only these are exempt. All other trucks than those "temporarily leased" to farmers engaged in the hauling of agricultural or horticultural products for hire are subject to a "for hire" license tax.

I am returning correspondence transmitted herewith.

Yours very truly,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES—REGISTRATION—NON-RESIDENTS

March 11, 1929.

Dear Sir:

Section 1293, Compiled Laws of 1927, provides that it shall not be necessary for a non-resident of this State to obtain registration of motor vehicles owned by him, provided that the owners shall have complied with the provisions of the Law of the State, from which he came relative to motor vehicles and the operation thereof, and shall conspicuously display his registration number as required by such law.

A person who comes to Florida and engages in business in this State ceases to be within the purview of the foregoing section of the Statutes and, is required to obtain Florida registration of his motor vehicle, notwithstanding the fact that he may be already licensed in some other state. The exemption of registration provided for by Section 1293, applies only to transients in Florida and, not to persons who engage in business in this State. Such has been the construction and operation of the law since its enactment, and in view of the large number of other persons, who have complied with this interpretation of the same, a deviation therefrom, at this time without the authority of the Legislature, would be unwarranted. I am, therefore, of the opinion that where a man owns and operates a saw mill in a county in this State, and uses motor vehicles in connection with his business being carried on in this State, that his cars used in connection with his Florida business should be registered in Florida, notwithstanding they are registered in Alabama, where such mill operator also conducts a business.

Yours very truly,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES—RIGHT OF RESIDENT TO OPERATE CAR OF
NON-RESIDENT—WITHOUT PAYING FLORIDA LICENSE.

October 10, 1929.

Dear Sir:

Section 1293, Compiled General Laws, provides that a motor vehicle owned by a non-resident of this State other than a foreign corporation, is not required to have a Florida license tag on it while being operated in this State, provided that at the time of the operation the non-resident owner of the car shall have complied with the laws of the State in which the non-resident has the car registered and shall be at the time displaying his registration number of the state in which he is registered.

You will note that a non-resident is only given the privilege of operating a car in this State without a Florida license on the express condition that he complies with the law of his native state relating to license tags and operation of the car. There is no law of any state in the Union that I am aware of, which permits the owner of a car registered under its laws to farm out the operation of the same to a citizen of another state as a means of evading the license laws of such other state. Therefore, an out-of-the-state car cannot be operated in this State under a foreign tag unless the same is operated in this state by

the foreign car-owner thereof, who at all times maintains his status as a non-resident and complies with the laws of his native state relative to his car and the operation thereof. Where a party or parties living in Florida and having employment in this State operate the car of a non-resident in connection with their employment in this State, they are required to have a Florida license tag on same. I notice in your letter of October 8th, that you state the defense offered by parties is that since operators of the car do not own the car, they cannot purchase license for same as the title is not in their name. Section 3977, paragraph (b) Compiled General Laws defines the owner as including not only the true title holder, but any person, firm or corporation, which controls any motor vehicle by right of purchase, gift or lease. Therefore, the operators of the car have the right to apply for a title certificate on the car, showing the ownership thereof in the name of the true owners, with themselves as lessee or bailee and to take a Florida tag out for same.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

**MOTOR VEHICLES—METHOD OF REGISTRATION WHERE SOLD
PURSUANT TO PROHIBITION LAWS**

December 18, 1929.

Dear Sir:

In your letter of December 2nd you refer to a letter received by you from Mr. C. H. Parks, Prohibition Investigator, West Palm Beach, Florida. Mr. Parks states that a certain automobile was seized by the Government in connection with an arrest for violation of the Prohibition law, but that the particular car did not contain any whiskey, and no court proceedings appear to have been taken by the prohibition authorities to have the car forfeited and sold for violating the prohibition law. It does appear, however, that Mr. Parks placed the car in storage on behalf of the government, and that a sale has been held by the garage owner, and the car sold for storage charges.

In my opinion, the sale for storage charges held under such circumstances vests no title in the person who purchased the car, and such title is not authorized to be registered in your office. Prohibition officers have no right to seize cars, place them in storage, and have them sold for storage charges without taking any legal proceedings whatever. If there are any storage charges due for storing the car in question, they would be due by the United States Government to the garage keeper, provided the prohibition investigator had authority to bind the Government in making a contract for storage. And if he had no such authority, then it is up to the prohibition investigator to pay such storage charges out of his own pocket,—if he acted without authority of the Government in having the car stored under circumstances where he knew there would be charges made for such storage. A car can only

be sold for storage charges where it has been stored by the voluntary act of someone owning or having an interest in the car.

Property rights cannot be divested by the act of strangers to the title in placing such cars in storage, after which they are sold for storage charges, as there is no law authorizing sales for storage under such circumstances. If the car in question has been abandoned by the true owner, and it is impossible to locate him, it should be disposed of by the county judge as wrecked and derelict property, after which proper title certificate can be issued.

I return herewith papers submitted to me for my opinion.

Yours very truly,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES—RIGHT TO ISSUE EXEMPT TAGS MUNICIPAL
AUTO LINE FOR PROFIT.

March 1st, 1930.

Dear Sir:

This will acknowledge receipt of your letter of February 27th requesting my opinion on the above subject.

Section 1281, Compiled General Laws, provides that every "owner" of a motor vehicle must have the same registered and pay the registration fee required to be paid on such motor vehicle. The term "owner" as used in the statute is broad enough to include and does include municipal corporation, who own and operate motor vehicles, whether for private use or for hire. Such has been the interpretation put on the act ever since it was first passed by the Legislature in 1921 and such construction of the law has become a settled departmental construction, which should not be lightly set aside. See *Bloxham Vs. Consumers Electric Light Co.*, 36 Florida 519.

The only exception contained in the law is that found in a proviso to Section 1285, Compiled General Laws, which proviso is to the effect that the registration requirement and the fee chargeable therefor shall not apply to motor vehicles when said vehicles are used *exclusively* by any political subdivision of the State. The purpose of this exception is to exempt from the requirement of a license motor vehicles, and only those motor vehicles, which are used *exclusively* by a city or town in order to carry out its proper municipal functions.

When a city or town engages in the operation of a transportation system, whether it be a street car line, railroad or bus company, the authorities are unanimous in their holding that such business conducted by a "city is conducted by the city in its corporate rather than its governmental capacity and partakes of the nature of a private business in its relationship to the law, including liability for taxation, as well as other legal liabilities. The mere fact that a business is conducted by a municipal corporation or that property is owned by a city or town does not make the business or the property exempt from taxation. Whatever exemption exists must be found in the terms of a valid statute passed by the Legislature for that purpose. In the absence of an express statute of exemption the presumption is that cities and towns are not to be

deemed as exempted". See *City of Jackson Vs. State, Ex Rel Mitchell*, Supreme Court of Mississippi, decided January 27th, 1930, not yet reported in advance sheets.

Our own Court has expressly held that laws granting tax exemptions are to be strictly construed against the person or corporation claiming the exemption. *Rast Vs. Hulvey*, 77 Florida 74; 80 Southern 750. Thus construing our own statutes, it appears to be the intent of the Legislature as embraced in the terms of Section 1285, Compiled General Laws, that only those motor vehicles, which are used *exclusively* by a municipal corporation shall be exempt from paying the registration fees provided for by law. A system of motor bus transportation owned and operated by a city or town in this State and employing vehicles used in the transportation of passengers for hire would, therefore, be subject to the registration fees and requirements of the Florida statutes relating to license taxes on motor vehicles as much so as if the motor vehicles were owned and operated by a private corporation under a franchise from the city. The only way the City of Daytona Beach can lawfully be exempted from paying license taxes on its motor vehicles owned and operated by the City of Daytona Beach for public transportation will be through the amendment of Section 1285, C. G. L. extending the exemption therein provided so as to cover such operations by a city. The fact that the City makes no profit out of the matter is immaterial. It is equally immaterial that a private corporation makes no profit out of its business. It is nevertheless subject to taxes. *Western Union Tel. Co., Vs. City of Decatur*, 81 Southern 191.

I am, therefore, of the opinion that you would not be authorized to issue to the City of Daytona Beach series "X" tags to be placed on city owned busses that are to be operated for hire in said city and not to be used exclusively by the city for its own municipal purposes.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE ROAD DEPARTMENT

ROAD DEPARTMENT—AUTHORITY OF ROAD DEPARTMENT TO
CONSTRUCT CONNECTION WITH GAINESVILLE BETWEEN
STATE ROADS 13 AND 14.

August 13, 1930.

Dear Sir:

This will acknowledge receipt of your letter of July 31st transmitting to me copy of resolution passed by the State Road Department, by which resolution I am requested to render an opinion to the Department as to whether or not the Department is authorized under the present laws of the State to have constructed a connection between State roads No. 13 and 14 at Gainesville, said connection to traverse the grounds of the University of Florida and to make available a roadway by which vehicles can enter and leave the University grounds with convenient access to and from State roads No. 13 and 14. My absence from the city has prevented my giving the matter my attention prior to this time.

In my opinion the State Road Department does have lawful authority

to construct a connection between State roads 13 and 14 at Gainesville, Florida, said connection to traverse the grounds of the University of Florida, so as to make the grounds of the University have easy access to State roads No. 13 and 14.

I base my conclusion as to the legality of the work by the Department on the fact that the original law creating the Department provided the Department with funds and gave it broad general powers relative to the control and disposition of said funds and the work to be done by the Department. Subsequent thereto the Legislature has passed statutes which place a limitation on the power of the Department to construct roads and expend money for road purposes. These statutes which are by way of limitation on the unlimited powers previously granted, must be construed in the light of what is intended to be accomplished by them, namely, that the activities of the Department shall be confined to said designated road purposes without being scattered over many sporadic operations.

I am informed that the proposed connection which the Department desires to make at Gainesville between State roads 13 and 14 involves less than a mile of road construction in its entirety, most if not all of which construction is to be within the boundaries of the University of Florida.

The present statutes prohibiting the road Department from spending State funds on other than designated roads and road projects, in my judgment do not apply to a situation where the Department finds it necessary, in order to relieve traffic congestion or to promote the safety of travel on the State highways at a State Institution, to make a connection between two already constructed highways, which connection is of minor character and does not amount to the building of what could reasonably be said to be a substantially different road from the two State roads which are being connected. It appears to me that under the peculiar situation existing at Gainesville, the connection proposed to be made may well be said to be a part of State roads 13 and 14, and within the power of the Department to accomplish as incident to promoting the usefulness from a traffic standpoint of roads 13 and 14, by relieving the congestion which the proposed connection will obviate.

In my opinion the Road Department will violate no statute in constructing the proposed connection, but has full authority to carry out the same if it deems it advisable.

Yours very truly,

FRED H. DAVIS, Attorney General.

**ROAD DEPARTMENT—POWER OF ROAD DEPARTMENT TO MAKE
SPECIAL CONTRACT FOR CONSTRUCTION OF STATE
ROAD No. 82, COLUMBIA COUNTY.**

September 23, 1930.

Dear Sir:

This will acknowledge receipt of your letter of September 15th asking my opinion as to the legality of the action of the State Road Department in advertising for bids to complete the construction of State road No. 82, Columbia County, Florida, to pay for work and materials necessary to construct the aforesaid road, by using bonds with accrued interest now

owned by Columbia County in lieu of money to be paid to the contractor.

I find nothing in the statutes or in the general law on the subject which would make such action of the Department illegal. Under the law the Department would have the right to sell the bonds of Columbia County which have been deposited with it, and use the proceeds to construct this road. The fact that the bond market makes it impossible to sell the bonds to fair advantage does not, in my judgment, preclude the Department from doing the next best thing by advertising for bids and doing the work by using the bonds themselves in place of cash if it can secure any contractor who is willing to execute a contract under such an arrangement. The fact that the bonds are issued and the people are being taxed to pay the carrying charges for the same implies that the benefits to be derived from the completion of the work for which the bonds were issued should be brought about as speedily as possible.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE SHELL FISH COMMISSIONER

CRAWFISH—SHIPMENT DURING CLOSED SEASON

February 25, 1930.

Dear Sir:

Sections 8073 to 8075, Compiled General Laws, regulate the possession of salt water crawfish in this State and the shipment thereof by carriers.

Section 8074, as amended, specifically makes it unlawful for any common carrier to carry crawfish between the 21st day of March and the 21st day of July, regardless of whether said crawfish might have been caught or secured in Florida or elsewhere. This section applies to crawfish whether caught inside the State of Florida or outside the State of Florida. The constitutionality of a similar law has been expressly upheld by the Supreme Court.

Section 8073, as amended, makes it unlawful for any person to take or catch any salt water crawfish from the waters of the State of Florida for commercial purposes between the 21st day of March and the 21st day of July. It also makes it unlawful for any person to have in possession any such crawfish between the 21st day of March and the 21st day of July. However, Section 8073 is not as broad as Section 8074, but only applies to crawfish taken from the waters of the State of Florida and would not apply to crawfish imported into Florida, which were caught from other waters than Florida waters. There is nothing in this statute which makes it unlawful to ship or otherwise dispose of any canned or processed crawfish put up prior to the closed season, but this would not permit the handling for shipment of fresh crawfish, which were merely kept fresh by the use of ice or some other freezing process after the end of the open season.

The purpose of prohibiting shipments of crawfish during the closed season whether caught inside the State or outside the State is to make the remedy of a closed season effective. If shipment of fish alleged to

have been brought in from outside of the State were permitted during the closed season, it would make it impossible for the officers to tell whether or not the fish being shipped were caught inside of Florida or outside of Florida, consequently there would be a strong likelihood that crawfish caught inside of Florida would be shipped under the pretense that they were imported crawfish if that were permitted. The Supreme Court has upheld the validity of such legislation on the same theory that it has upheld legislation prohibiting the sale of beverages, which resemble liquor, but which are not liquor in order to make the liquor law completely operative.

I return herewith the letter written to Governor Carlton, which was sent to me with your communication.

Yours very truly,

FRED H. DAVIS, Attorney General.

SHRIMP—CATCHING.

April 18th, 1930.

Dear Sir:

In the case of *White Vs. the State*, 113 So. 94; 93 Fla. 905, the Supreme Court held that the statute regulating salt water fishing should be construed as limited to the waters of the State's jurisdiction in the absence of express provision to the contrary. There is nothing in Chapter 13800 which undertakes to regulate the possession or sale of shrimp caught in Georgia in the closed season on shrimp in Florida, therefore, under the ruling of the Supreme Court just referred to, shrimp caught outside of Florida waters are not affected by the closed season provided by Chapter 13800, because of the fact that there is nothing in said Chapter which expressly provides that such law shall apply to such shrimp which are caught in Georgia waters by Florida dealers. I am of the opinion, therefore, that shrimp caught in Georgia waters by Florida dealers can be possessed, sold and shipped by dealers from Fernandina.

Yours very truly,

FRED H. DAVIS, Attorney General.

CRAWFISH—HANDLING FROM CUBA—DURING CLOSED SEASON

April 18, 1930.

Dear Sir:

Under the ruling of the Supreme Court in the case of *White vs. the State*, 113 So. 94; 93 Fla. 905, I am of the opinion that Chapter 13618, Acts of 1929, amending the law relating to crawfish, does not apply to crawfish which are brought in this State from outside of the jurisdiction of the State of Florida, but only applies to crawfish taken from the waters of the State of Florida. The effect of the 1929 amendment is to wipe out the provisions of Section 8074, Compiled General Laws, which primarily applied to all crawfish whether brought into the State of Florida or not.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS.

The following are a few of the opinions rendered by this office to County Officers in various counties of the State which may be of interest to the public generally:

CLERKS CIRCUIT COURT

COUNTY COMMISSIONERS—ENTITLED TO EXPENSES FOR ATTENDING MEETINGS INVOLVING INTEREST OF COUNTY IN DIRECT LEGAL WAY.

April 12, 1929.

Dear Sir:

I beg to answer your inquiry of April 3rd, as follows:

I am of the opinion that a Board of County Commissioners may make provisions in its budget for paying expenses of members of the Boards, its attorney and possibly its Clerk in attending meetings which involve the interest of the county in a direct legal way, such as meetings of the State Road Department, meetings of the State Drainage Board and the like, and that such expenses may be paid out of County Funds to the extent authorized by the Budget. I am of the opinion, however, that the Board has no right to appoint outsiders as delegates to attend such meetings and pay their expenses at the cost of the county. Only members of the Board and their direct legal connection, such as attorney and clerk are entitled to act in such matters and receive reimbursement for expenses incurred, and even these are not entitled to receive expenses for attending meetings other than the official meetings of such State Departments or Boards before which the county may have some matter pending or likely to arise.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

JURORS—MILEAGE AND COMPENSATION.

January 25, 1929.

Dear Sir:

I have your letter of January 15th, asking my opinion as to the method of computing compensation of jurors in certain cases.

My opinion is that where a juror is properly summoned and appears in response to a jury summons but on account of his urgent duties and at his own request he is excused from further jury service, he is not entitled to any per diem or mileage.

On the other hand, where a juror is properly summoned and appears in response to the summons and is excused by the Court, not at the juror's own request but for some legal cause or for some legal disqualification or by reason of some legal exemption, such as over age, etc., in such case the juror is entitled to mileage and to one day's compensation for attendance

on the court on the day on which he appeared unless he appeared more than once, in which case he would be entitled to additional per diem.

As far as I am advised this rule prevails throughout the whole State and it is adhered to and approved by all of our Circuit Judges.

Very truly yours,

FRED H. DAVIS, Attorney General.

INDUSTRIAL SCHOOLS—FEES OF SHERIFFS IN TRANSPORTING CHILDREN.

February 18, 1929.

Dear Sir:

I have your inquiry of February 6th, relating to the fees payable to the Sheriff for transportation of boys and girls to the Industrial Schools.

Under the provisions of Section 8464, Compiled Laws, 1927, the Sheriff is allowed his actual expenses for taking prisoners to the Florida Industrial School for Boys. Actual expenses mean the cost incurred by the Sheriff for the transportation of the offender to the school.

In addition to the actual expenses, I think the Sheriff would be entitled to his lawful fee for executing a commitment, which is provided for by Section 4488, Compiled Laws, as being \$4 a day for himself and \$2 a day for each guard actually necessary for the transportation.

No other fees can be allowed.

The provisions of the statute to the extent that the State will furnish transportation was held unconstitutional several years ago on the theory that under the State Constitution costs in criminal cases cannot be paid by the State. Therefore, this portion of the law has never been observed.

You will understand that the same procedure with regard to commitment of girls to the Industrial School will apply.

Trusting this answers your inquiry, I am

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF—MILEAGE FOR TRANSPORTATION OF PRISONERS ORDERED TO STATE HOSPITAL.

March 9, 1929.

Dear Sir:

Under the Laws of Florida, the Sheriff is entitled to receive 12½ cents per mile for transportation of prisoners in his custody. This is covered by the item found in Section 4588, Compiled Laws of Florida, which reads, as follows:

"Removal of prisoners to or from jail, per mile each way
12½c.

Section 4592, Compiled Laws of 1927, prohibits the charging of constructive mileage, therefore, under the law, the Sheriff is only entitled to receive 12½ cents per mile for transporting from jail to train a prisoner, who has been ordered committed to the Florida State Hospital for Insane.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX COLLECTOR—AUTHORITY TO APPOINT DEPUTY.

March 30, 1929.

Dear Sir:

I find nothing in the statutes which prohibits a Tax Collector from appointing deputies to receive taxes in any part of the county, if he desires so to do. If a deputy is appointed to receive taxes in a remote part of the County, such deputy of course, has a right to receive poll taxes as well as other taxes.

Trusting this answers your letter of March 29th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFFS—EMPLOYMENT OF GUARD AT JAIL.

May 23, 1929.

Dear Sir:

I beg to acknowledge receipt of your letter of May 18th with reference to Sheriff's fees.

The general fee bill for Sheriffs, Chapter 10091 Acts of 1925, provides for an allowance for guard hire of not exceeding \$2.00 per day. This means, as I have heretofore indicated in an opinion rendered from this office, that where a sheriff employs a guard at the jail he is entitled to reimbursement for such guard at the rate of not more than \$2.00 per day. In order to entitle the sheriff of this reimbursement, he must actually hire the guard and the County Commissioners must be satisfied that the guard was employed and pay for the service for which the compensation is claimed. There is nothing in the statute to indicate that the sheriff is allowed the sum of \$2.00 per day for the hire of a guard, whether he hires a guard or not. The allowance is for the expense incurred by the sheriff in keeping a guard, and it is fixed at not more than \$2.00 per day, which means that, if the sheriff hires a guard for \$1.00 per day, he can only receive reimbursement for what he actually pays out to the guard.

The necessity of employing a guard is a matter which must be determined by the Sheriff, as the Sheriff is held accountable for the custody of the prisoners in the jail and, even though it may seem to the County Commissioners that hiring a guard is unnecessary, yet, if the sheriff believes that such guard is necessary and employs such guard, he is entitled to have the guard in accordance with the statute.

Trusting this answers your inquiry of May 18th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX COLLECTOR—PROCEDURE WHERE TAX COLLECTOR SELLS LANDS UPON WHICH TAXES HAD BEEN PAID.

October 5, 1929.

Dear Sir:

Section 973, Compiled General Laws, provides that if any Tax Collector shall sell any lands upon which the taxes have been paid, he shall be liable to the owners of said lands for twice the amount of the tax, and in addition shall pay all legitimate expense the owners shall be put to in clearing the title, including a reasonable attorneys fee fixed by the Court,

and, shall refund to the State all amounts with which he may be credited on account of such illegal sale, including cost of advertising.

This section also provides that the Tax Collector shall be responsible to the publisher for the cost of advertisement of land on which the taxes have been paid and the Tax Collector shall be responsible to the publisher for costs of advertising lands doubly assessed.

It would appear from the above statute that the responsibility for the sale of lands upon which taxes have been paid, whether doubly assessed or not, is clearly placed on the Tax Collector, who is required to so check his sales as to avoid selling lands upon which the taxes have been paid, even though doubly assessed.

Section 959, Compiled General Laws, provides that the Tax Collector shall do when he finds lands that have been doubly assessed.

The tax sale certificate issued pursuant to a sale made when the taxes are already paid is void and the money received thereon should be refunded to the certificate holder.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—RIGHT OF SURETY ON BOND TO BE RELIEVED THEREFROM.

October 10, 1929.

Dear Sir:

Answering your inquiry of October 9th on the above subject, I beg to advise that in my opinion the only way in which a surety upon the official bond of a member of the Board of County Commissioners can be relieved from said bond is for the County Commissioners to prepare and file another bond duly approved by the County Commissioners and Comptroller in substitution for the one from which the surety in question desires to be relieved. When a person becomes surety upon a county officer's bond, the Law presumes that he will remain such surety for the full term of office of the officer, and the surety has no right to be relieved therefrom at will as would be the case of being relieved from a bail bond, which could be accomplished by merely surrendering the prisoner to the sheriff.

However, the county officer has the right with the approval of the Comptroller to substitute a new bond in place of the old one and in that way relieve the particular surety, who no longer desires to stay on the officer's bond.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFFS—FEES FOR EXECUTING LIQUOR LAW.

October 10, 1929.

Dear Sir:

This will acknowledge receipt of your letter of October 8th, asking my opinion on the above question. In the Attorney General's report for 1921-

1922, on page 103, I find the following opinion rendered by former Attorney General Rivers Buford, under date of October 6th, 1922:

"I have advised several sheriffs that the following schedule of fees are the proper fees to be charged in cases involving the capture and confiscation of illicit intoxicating liquors and distillers, to-wit:

To seizing liquor or apparatus.....	\$2.00
To transporting liquor or apparatus, per mile.....	12½
To traveling——miles at per mile.....	12½
To destroying liquor or apparatus or selling property under order of Court	5.00
To making return	25

In addition to what has been said by General Buford on the subject, I might add that the Laws of Florida prohibit an officer from collecting for constructive mileage in any case, and, therefore, the sheriff is not entitled to any mileage which is not actually earned by traveling.

In the case of liquors seized under Section 7627, the proceeding is regarded as a proceeding in rem, and the liquor itself is regarded as the real defendant in the case. See *In Re: 7 barrels Wine*, 79 Florida 1, where the liquor was dealt with as the defendant.

When a sheriff arrests a prisoner and seizes a quantity of liquor at the same time, he is entitled to his regular fees and mileage for arresting the person of the defendant and is also entitled to an arresting fee for the liquor and mileage for transporting liquor and apparatus just as he would receive for transporting a prisoner. The sheriff would only be entitled to one mileage for going after the prisoner and the liquor in the event he did so under process.

In conclusion let me call your attention to the fact that Section 7627 being a proceeding in rem differs from the proceeding mentioned under Section 7626. Where a prisoner is arrested and only a small quantity of liquor is seized at the same time to be used as a matter of evidence rather than the subject of a separate proceeding under Section 7627, the sheriff is not entitled to any fees or mileage with reference to the seizing of such liquor merely as evidence to be disposed of under Section 7626. On the other hand, where a regular forfeiture proceeding is instituted and carried out under Section 7627, the case proceeds just as if the liquor were a defendant in Court and the regular fees are chargeable therefor by the Clerk and Sheriff. If a sheriff seizes liquor or other contraband and fails to institute and carry out a proceeding under Section 7627, he is not entitled to any fees whatever for the seizure and transportation of the seized contraband. Under Section 7626, forfeiture is the order only as an incident to a conviction for crime and the sheriff is entitled to his fees for executing the judgment of the Court ordering the forfeiture, but is not entitled to fees for seizing or bringing in liquors under Section 7626.

Trusting this information will be of value to you, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAX CERTIFICATES—NECESSARY TO BE SIGNED PERSONALLY BY
TAX COLLECTOR—RUBBER STAMP NOT PERMISSIBLE.**

December 13, 1929.

Dear Sir:

My opinion to the effect that tax certificates should be personally signed by the Tax Collector and not placed thereon by a rubber stamp is based upon the specific provision of Section 17, Chapter 14572, Acts of 1929, which provides that tax certificates "signed" by the Tax Collector shall be admissible in evidence and shall be prima facie valid, which presumes that those which are not "signed" would not be admissible in evidence and not prima facie valid.

Please do not understand me as holding that failure of the Tax Collector to "sign" a certificate renders the certificate invalid entirely, because my belief about the matter is that a rubber stamp used on a tax certificate would render the same irregular and subject to objection, but not entirely void.

The same rule would not apply to county warrants, which I think can be legally signed in the name of the Chairman of the Board of County Commissioners by means of a rubber stamp or otherwise.

The difference between signing a county warrant by a rubber stamp and signing a tax certificate by rubber stamp is that property rights pass under tax certificates, while county warrants are merely an order on the Treasury for payment of certain funds, which only need to be in certain form as to satisfy the paying officer that the warrant is genuine. You can check this back by the warrant number and other circumstances.

Trusting this answers your letter of December 10th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFFS—FEES FOR EXECUTING JURY VENIRE AND SUMMONING JURORS.

December 15, 1929.

Dear Sir:

Section 4588, Compiled General Laws, contains two items concerning compensation of sheriffs, which items read as follows:

"Venire, Grand or Petit Jury, executing.....	\$5.00
Mileage per way, each way.....	12½
Jurors or talesmen or bystanders, summoning under venire or by orders, each.....	20

My interpretation of this statute is that the sheriff receives \$5.00 as a general fee for executing a regular venire for jurors at each term of Court, plus 12½c mileage per mile in the execution of the venire.

In addition to this, he is entitled to 20c each for each juror he actually locates and serves a summons on. If he fails to locate and summons a juror the sheriff does not get this 20c, but his compensation for that service is deemed to be included in the \$5.00 paid him for the venire. The \$5.00 fee is only paid to the sheriff for executing the regular grand or petit jury venire, which must be executed before each term of Court.

Where special jurors are needed and special venire is issued for one or more special talesmen or bystanders, the sheriff does not receive a \$5.00

fee for executing a venire of that character, but is limited to his compensation of 20c for each juror summoned under the venire, plus his mileage for executing the same.

In other words, the language of the statute referring to a \$5.00 fee for executing a grand or petit jury venire, has reference to the regular venire and not to special venire as I construe the law.

You will understand that there is a statute on the books, which provides for the sheriff to summons regular venire by mail prior to the convening of each regular term of Court. See Section 4463 and 4464, Compiled General Laws. In some counties the Judge makes a special order that the sheriff shall personally serve such jurors instead of relying upon the mails.

Trusting this answers your inquiry of December 5th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERK COUNTY COURT—FEES WHEN PRISONER PLEADS GUILTY.

December 30, 1929.

Dear Sir:

Section 4867, Compiled General Laws of Florida, provides that the Clerk of Circuit Court shall receive a per diem of \$5.00 for Court attendance.

Sections 5177 and 5178, Compiled General Laws, provides that the rules of practice in all general provisions of law which apply to Circuit Courts, shall apply to County Courts. Under the last stated sections of the Law, it is necessary that the procedure in County Courts conform to that which is observed in Circuit Courts, inasmuch as both Courts are made Courts of Record. It appears to me that when the County Court acts in any purpose by disposing of criminal cases by sentence, that it must of necessity be temporarily convened for that purpose and the proper minutes of the entry of the sentence and other proceedings, such as arraignment and plea would have to be made. Inasmuch as the Clerk of Circuit Court is ex-officio Clerk of the County Court, it would require the presence of the Clerk of Circuit Court at such temporary convening of the Court in order to make a proper notation on the minutes.

In my opinion, this would constitute a Court attendance, which would entitle the Clerk to his per diem of \$5.00 for performing services required to be performed in such case.

While it may seem unjust that a per diem fee should be paid the Clerk for a few minutes service of this kind, the remedy of the situation is in the hands of the County Judge, who could set one day per week or some other special day for handling matters of this kind when there would be sufficient business transacted to warrant the expense. At the same time, the Clerk is entitled to the per diem if he is called upon to act and there is nothing contained in the law, which deprives him of his right to the fee merely because the services are comparatively small in a particular instance.

Trusting this answers your request for my opinion on the subject, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—AUTHORITY TO PAY EXPENSES
DELEGATES FOR ATTENDANCE ON MEETING ASSOCIA-
TION COUNTY COMMISSIONERS.

March 14, 1930.

Dear Sir:

Your letter of March 7th on the above subject has been called to my attention.

Paragraphs 11 and 12, Section 2153, Compiled General Laws, give county commissioners general authority to apportion and order the levy of taxes for county purposes in accordance with the law whether for a specific or general purpose, except when otherwise provided by law, and to approve all accounts against the county.

In my opinion, the county commissioners under authority of the above provision of the law have the right to provide for the attendance of one or more of their members at the State Association of County Commissioners when it meets for the purpose of discussing and acting upon matters of public welfare, which relate to their official duties and powers, provided the payment of such expenses is properly arranged for in the county budget.

The Federal Courts have ruled that attendance upon Bar Association meetings by lawyers constitutes a proper and legitimate expense incident to the practice of law, which is chargeable against the income tax. Other courts have ruled that the attendance of officers upon meetings and conferences held with other officers from other jurisdictions for the purpose of discussing and settling problems of mutual interest, constitute a proper expense payable out of public funds as having been performed in the course of official duty. Our own Legislature has specifically recognized this principle by making an appropriation for our Supreme Court Judges to attend conferences of judges and bar association meetings.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

DELINQUENT TAX ADJUSTMENT CERTIFICATES—AUTHORITY OF
CLERKS TO SELL.

April 7, 1930.

Dear Sir:

Your letter of April 3rd on the above subject has been called to my attention.

I thoroughly agree with your opinion to the effect that after a tax certificate has been adjusted and ten days has been allowed under Section 38 for the owner or other person interested to redeem the same at the adjusted amount, that thereafter the certificate may be sold by the Clerk to anyone upon payment of the amount agreed upon by the adjustment Board. Such sale will not prejudice the owner of the property nor defeat him in the right of redemption, because the law guarantees him the right to redeem such certificate from the purchaser thereof by paying identically the same amounts which he would be required to pay to the Clerk of the Circuit Court if he redeemed the certificate in the Clerk's hands, namely, 2 per cent per month from date of adjustment, provided

it was redeemed on or before June 30th 1930. Of course, if it is not redeemed on June 30th 1930, the owner will have to pay the purchaser of the certificate the amount which would have been due had no adjustment been allowed.

The purpose of the law known as Chapter 14572 providing for the adjustment of delinquent tax certificates was to provide for the immediate liquidation so far as possible of such certificates, first, by offering the same at reduced rates to the owner of the property so that he could redeem his property at less than the face value of the certificate, and then if the owner refused to take advantage of the liberal offer made him by law to dispose of the certificates in the open market to someone else who would be willing to put up the money to pay them.

The system of selling tax certificates in Florida has been in force not less than twenty-five years, during which time the Clerks of the Circuit Court have sold certificates at the face amount to anyone who cared to purchase the same from the Clerk. Certainly, if a stranger to the title can come in and buy a certificate at the face amount, there is nothing in the law which says that he cannot buy it at the adjusted amount, if the owner of the property has been given his chance to redeem it at the adjusted amount and has willfully and premeditatively refused to do so. Section 42 of the law suspended the sale of tax certificates by the Clerk up till January 1st, 1930, but after that date the certificates have been subject to sale the same as formerly. The very fact that the law specifically mentions that no tax sale certificate shall be sold prior to January 1st implies in and of itself that after January 1st the certificate can be sold. Otherwise, the law would have read that no certificate could be sold at all and not specified a date.

Trusting this information is what you require, I am with kind personal regards,

Yours very truly,

FRED H. DAVIS, Attorney General.

**FEEDING PRISONERS—FEES FOR PRISONERS WHO ARE BEING
WORKED ON ROADS**

May 12, 1930.

Dear Sir:

The above subject is regulated by Section 8549 which provides that the Board of County Commissioners, when working county convicts on the public works of the counties, shall provide or cause to be provided substantial food, clothes, shoes, medical attention, etc.

This means that the county commissioners usually contract with a sheriff or some other other responsible party to feed such prisoners as are being worked on the highways and agree to pay him such compensation therefor as is reasonable for furnishing the kind of food that is required to be furnished to a working convict.

When prisoners are being worked under Section 8549 it is not necessary that the county limit itself to the payment of the ordinary fees prescribed by Section 2838 for the feeding of prisoners who are not being worked but who are kept in jail and therefore require less food and attention. The 85c a day that the sheriff has been heretofore paid

was evidently paid by the county commissioners under some kind of contract made with the sheriff under Section 8459.

Yours very truly,

FRED H. DAVIS, Attorney General.

**ELECTIONS—RIGHT OF CANDIDATE TO WITHDRAW AND RECEIVE
RETURN FILING FEE.**

May 22, 1930.

Dear Sir:

I have been out of the City and consequently your letter of May 10th has not been answered. I have also been more than usually engaged in matters of litigation since my return.

It seems to me that a candidate can be reimbursed the amount of his filing fee if he withdraws from the race at any time before the final day for qualification has expired. The last day for a county candidate to qualify was May 8th, and if the candidate you refer to indicated to you on or prior to May 8th that he wished to withdraw from the race, you would be authorized to refund him his money, otherwise not. If a man has properly qualified and paid his fee but becomes disqualified because of failing to file his first campaign expense statement, his fee cannot be returned to him. The loss of the fee is one of the penalties the candidate must suffer for failing to file his campaign expense statement, as required by law.

Trusting the above answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—INSPECTORS AND CLERKS FOR SECOND PRIMARY.

May 30, 1930.

Dear Sir:

This will acknowledge receipt of your letter of May 28th on the above subject.

The Inspectors and Clerks who are appointed to hold the first Primary should also serve in the second Primary, where one is necessary. If any of the Inspectors or Clerks who served in the first Primary fail to show up at the polls on election day in order to conduct the second Primary, their places can be filled by bystanders in the manner provided by law. It is not necessary that the County Commissioners name a new set of Inspectors and Clerks for the second Primary. Those appointed for the first Primary serve in the second Primary without further appointment.

Yours very truly,

FRED H. DAVIS, Attorney General.

**CLERK CIRCUIT COURT—DUTY TO REMOVE IMPROPERLY RE-
CORDED INSTRUMENT FROM RECORDS.**

June 5, 1930.

Dear Sir:

This is in answer to your letter of June 3rd requesting my opinion on the above subject.

The holding of the Supreme Court in the case of *Schab vs. Leather-*

man, 124 So. 459, is that it is the duty of the clerk circuit court to refuse to record an improperly acknowledged instrument or an instrument which is not authorized by law to be recorded, and that inasmuch as it is the duty of the clerk to refuse to record such unauthorized instruments, if by accident or otherwise he does record the instrument it then automatically becomes his duty to remove the improperly recorded instrument from the record upon demand of any person interested in having the same removed.

My construction of the court opinion referred to is that the clerk of the circuit court upon demand of an interested party should expunge any instrument from the records which under the law he would be authorized and required in the first instance to refuse to record because it was improperly acknowledged, or because it was not an instrument which the law permits to be recorded.

It is not necessary that the clerk have a writ of mandamus to authorize him to do this. On the contrary, the writ of mandamus is never granted except to compel an officer to do something which it is his plain duty to do without the necessity of the writ, but which he refuses to do otherwise.

At the same time, the clerk of the circuit court must proceed cautiously in undertaking to expunge or erase from the records any paper which he has once placed on record, and only in the clearest cases would I advise any clerk of the circuit court to expunge or erase a paper from the record without first having the same submitted to judicial sanction. This means that in any doubtful case the clerk should refuse to erase the paper and may have the party desiring to have the same expunged or erased to obtain a writ of mandamus so that the matter may be submitted to the court for a ruling.

At the same time, in clear and undisputed cases the clerk ought not to put parties to the expense of a law suit in granting relief, because the Supreme Court has held that it is the plain legal duty of the clerk upon demand to expunge any improperly recorded paper.

For example, in some counties unacknowledged contracts relating to lands have been placed on record in spite of the fact that the law requires an acknowledgement of every such paper. When this is called to the attention of the clerk he should expunge such paper from the record upon demand.

Trusting this makes the matter clear, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

DEATH WARRANT—WHAT CONSTITUTES RECORD TO WARRANT ISSUANCE BY GOVERNOR.

June 5, 1930.

Dear Sir:

This will answer your question of June 3rd on the above subject.

Section 8428, Compiled General Laws, provides that the clerk shall make out and deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence in a capital case. This ordinarily has reference only to the court matters, indictment, verdict of the jury, sentence, etc., and does not include the testimony in the case unless

the testimony has been incorporated in a bill of exceptions signed by the Judge and made a part of the record.

In the event the case has been appealed to the Supreme Court the mandate of the Supreme Court should be included as a part of the whole of the record referred to. Usually in Supreme Court cases a copy of the transcript of the record used in the Supreme Court which is supposed to be the whole of the record in the case is turned over to the sheriff so that he might obtain a death warrant on such record, but in cases which have not been appealed to the Supreme Court, and where no bill of exceptions has been asked for or filed with the Judge it is only necessary to furnish copy of the indictment, extracts from the court minutes relating to the case, and copy of the sentence of the Court.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

HABEAS CORPUS—PAYMENT COSTS WHEN DEFENDANT DISCHARGED.

June 24, 1930.

Dear Sir:

Under Section 5135 of the Compiled General Laws, the county is required to pay all costs in habeas corpus cases where the defendant is discharged. I think this Section, however, has reference only to habeas corpus cases involving a detention of a prisoner on a charge of violation of some state law or the process of some state court. Where the defendant has been held in the custody of the chief of police and he is ordered discharged, the costs should be taxed against the city or town involved. Such is the general practice in cases which have been argued in the Supreme Court where the Supreme Court issued a writ of habeas corpus against a town police officer and the defendant was ordered discharged. The Supreme Court has always taxed the costs against the city or town. Such an order was made in the case of *ex parte Harrell*, 76 Fla. 4, against the City of Tallahassee.

Yours very truly,

FRED H. DAVIS, Attorney General.

BONDS—APPEARANCE BONDS—APPROVAL AND ESTREATURE OF.

June 24, 1930.

Dear Sir:

This is in answer to your letter of June 18th on the above subject.

Under Section 8435 the approval of the bail bond would ordinarily be made by the Justice of Peace or by the Sheriff. However, there is nothing to prevent a Constable from taking and approving a bail bond so long as the Constable has the custody of the prisoner, because the accused has the right to make bond and this right is the right given him under the Constitution of the State. Where the Constable arrests a man and has him in custody, I do not think his constitutional right can be defeated by requiring him to wait until he is delivered to the sheriff before he is allowed to make bond, but after the return of the warrant, the accused is supposed to be committed to await trial or further hearing

The commitment is to the custody of the Sheriff, consequently the bail bond should then be approved by the Sheriff.

In the case of *West vs. The State*, 75 Fla. 379, the Supreme Court held that the approval of a bail bond by an improper officer was not available as a defense against the collection of the bond. Therefore, even if the bond were approved by the Constable it would not be any ground upon which the surety upon the bond could be relieved of their obligation.

Your next question is as to the sureties. A married woman can under no circumstances be a surety on a bail bond, either with or without the consent of her husband thereto. If the husband signs the bond, he will be bound as surety but the married woman will not. The fact that the husband joined with his wife makes no difference in this respect insofar as the husband's liability is concerned.

The ordinary method of enforcing collection of bail bond is under Section 8351 to 8357 by turning the bond over to the Clerk of the Circuit Court for the procedure therein contemplated. The proceedings under Sections 7545 and 7546 are additional proceedings under which the defendant can be prosecuted for failing to appear in response to his bond. I think you are taking the correct procedure in following the provisions of Section 8354.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**SHERIFF—RIGHT TO FEES FOR RETURNING PRISONER WHEN
CONVICTION AFFIRMED BY SUPREME COURT.**

July 2, 1930.

Dear Sir:

Replying to your letter of July 1st with reference to the payment of the sheriff's fees for bringing back to the county persons who have been convicted and their conviction affirmed by the Supreme Court and who gave supersedeas bond to appear and abide by the final order and judgment of the Court, it is my opinion that their bondsmen are liable for the cost of bringing them back to the courthouse where they were obligated to appear. But I am also of the opinion that the county should pay the sheriff's costs, and the county itself look to the bondsmen for reimbursement because of the mandatory duty devolving upon the sheriff to take the party into custody upon a commitment being placed in his hands.

In other words, when a commitment is placed in the hands of the sheriff he has no authority to hold it up or question the source of his compensation for his services in that respect, nor should he be put to the expense if any of collecting his compensation from the bondsmen.

I think the county should pay the sheriff's legal fees and call on the bondsmen to reimburse the county for same.

Yours very truly,

H. E. CARTER, Assistant Attorney General.

ELECTIONS—INSPECTORS AND CLERKS FEES—ELECTION CON-
TEST CASES—PAYMENT OF.

July 8, 1930.

Dear Sir:

Your letter of June 27th has been called to my attention since my return to Tallahassee.

Assuming that there is some proper item in your budget to cover the same, I see no reason why the County Commissioners are precluded from paying the managers and clerks of election for services rendered by them in complying with the order of the court to perform further services in connection with their duties as election inspectors and clerks. I base this conclusion on the fact that the County Commissioners originally appointed such inspectors and clerks to perform a county service. The law provides that they shall receive certain compensation at the expense of the county which is available out of the funds which were appropriated by the county as an expense of holding the election. The duties to be performed by inspectors and clerks are public duties and they act as the agency of the county in conducting the election and the county by appointing them in effect contracts to undertake to pay such inspectors and clerks until they complete their duty; therefore, every day's service which the inspectors and clerks are required to perform through court proceedings or otherwise which are a result of their original appointment as such may be lawfully paid for by the county if the county so desires.

I use the last statement advisedly, because I think the County Commissioners would be warranted in refusing to pay inspectors and clerks where by virtue of their willful design or gross neglect they were required to carry out a recount because of a failure on their part to properly count in the first instance. In other words, the County Commissioners might penalize faithless inspectors and clerks by withholding their compensation for neglect of duty just as they could refuse to pay any other appointee of their own creation on a similar ground. At the same time, if the County Commissioners feel that the inspectors and clerks failed to count the votes correctly the first time because of a misunderstanding as to the way they should perform their duties or for any other excusable cause there is nothing I see in the law which will preclude the County Commissioners from paying these inspectors and clerks their additional compensation out of county funds.

The Supreme Court has held and in fact has predicated its decision in election matters on the theory that inspectors of elections are under a continuing duty which is only discharged when performed according to law. The order of the court requiring a recount is simply an adjudication that for some reason, intentional or unintentional, the service was not satisfactorily performed in the first place and, therefore, should be done over again.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—CAMPAIGN WORKERS.

July 29, 1930.

Dear Sir:

I regret that I was out of the City when your letter of June 28th came to my office. I have been away for one reason or another almost continuously for the past three weeks, consequently I have not had the time to answer the same.

Section 423 of the Compiled General Laws requiring sworn statements showing the names of political workers was passed for the corrupt practice Act of 1913. The corrupt practice Act of 1913 makes it unlawful for any candidate in the primary election to have paid political workers. The purpose of allowing Section 423 to remain in the statutes was evidently to check up on whether or not the terms of the corrupt practice Act were being violated by expending money for paid campaign workers and to enable prosecutions to be maintained for perjury if paid workers were hired and the statement made showed that no such workers were employed. There has been considerable misunderstanding about the matter because of the fact that Section 423 was left in the statutes, and undoubtedly there may be instances of where candidates have unintentionally been led into a technical violation of the corrupt practice Act on the assumption that a statement of campaign workers is required to be filed that the employment of such workers for such positions is lawful. An examination of the statutes will show beyond question that the employment of paid political workers is clearly a violation of Section 8185 of the Compiled General Laws as well as Section 8182 of the Compiled General Laws. The paid political worker who accepts money for his particular service is guilty of violation of Section 8186 of the Compiled General Laws.

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERK CIRCUIT COURT—TRANSFER OF FUNDS UNDER BUDGET LAW.

August 4, 1930.

Dear Sir:

I am not sure that I understand exactly what you propose to do as mentioned in your letter of August 1st, on the above subject.

The transfer of moneys from one fund to another is expressly permitted by Section 2304 with the approval of the Comptroller. This means that if there are certain items budgeted against the Fine and Forfeiture Fund but the money in that fund has been exhausted but at the same time there is money in the General Revenue Fund, that money can be taken out of the General Revenue Fund and put into the Fine and Forfeiture Fund, to meet the obligations budgeted against the Fine and Forfeiture Fund, however, there is no such thing as a transfer of items of appropriation from one fund to another. If you have a surplus in your General Revenue Fund but the money in your Fine and Forfeiture Fund is exhausted and there are unpaid claims against the Fine and Forfeiture Fund, it is permissible to transfer money from the General Revenue Fund to the Fine and Forfeiture Fund to meet the items which

are necessary to be paid out of the Fine and Forfeiture Fund. Approval of the transfer should be procured from the Comptroller as provided in Section 2304.

Trusting this covers your situation, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS—SETTLEMENT WITH COUNTY COMMISSIONERS AND LEGAL EFFECT THEREOF.

August 4, 1930.

Dear Sir:

This will acknowledge receipt of your letter of July 24th, asking for my opinion as to the legal status of a case where a Clerk of the Circuit Court or a County Judge or any other officer files with the County Commissioners his report as required by Section 2865, et seq., Compiled General Laws, Chapter 14502, Acts of 1929, which report is fairly and truthfully made with no attempt at fraud or deceit, but the officer making the report does not include in his report items of compensation which he claims to be exempt. The County Commissioners acting advisedly in the matter with full knowledge of the facts afterwards accepting the reports and making no exceptions thereto, and said Board of County Commissioners having acted upon the advice of their legally appointed attorney who construes for them that the law in question is in favor of the position taken by the county official with reference to the exempt item, after all of which a construction of the law in question is made by the Supreme Court which holds contrary to the position taken by the County Commissioners, their attorney and the county official involved.

In the case of Jefferson County vs. Hawkins, 23 Fla. 223, it was held that a voluntary payment of money paid upon a claim of rights with a full knowledge of all the facts cannot be recovered back merely because the party at the time of payment was ignorant of or mistook the law as to his liability and that the illegality of the demand paid constitutes of itself no ground for relief but there must be in addition some compulsion or coercion attending its assertion which controls the conduct of the party making the payment.

It appears to me that the rule laid down in the above case will control and cover in all cases of settlements which have heretofore been made between county officers on the one hand and the Board of County Commissioners on the other hand in the administration and carrying out of the provisions of Section 2865, et seq., Compiled General Laws, Chapter 14502, Acts of 1929, wherein the making of the settlement between the parties both parties are cognizant of all the facts in the case and no fraud or misrepresentation or concealment of facts was practiced by the county officer in securing his settlement with the County Commissioners. Until such time as the Supreme Court construes the law in a particular case, those officers and Boards who are required to carry it out had the right to place upon the law their own honest construction and interpretation of the same and where such construction and interpretation was honestly made with full knowledge of all the

facts and no concealment on the part of any person at interest has resulted in a settlement between the county officer and the Board of County Commissioners, I think that such settlement is conclusive as between the parties, even though such settlement was made upon a basis which was later held by the Supreme Court to be contrary to law or not sustained under a particular construction of the law. Of course if there is concealment or misrepresentation or other acts or conduct between the parties evincing bad faith in the execution of the law, such settlement will not be final and conclusive, but in my judgment is subject to being set aside at a later date.

I have hesitated to answer your inquiry because of the fact that a suit was pending in the Supreme Court of this State, whose opinion might have a bearing on this case, and I did not want to express myself with regard to any matter which might be pending in the courts, as such expression might be construed as an impropriety on my part. I notice from the Press reports that such suit has now been dismissed by the Supreme Court and accordingly I will answer your inquiry with my expression of opinions for what they may be worth.

The foregoing letter relates only to those cases where reports have actually been made as settlements between the Board of County Commissioners and the officers and have been completed and accepted without fraud or collusion between the parties.

Very truly yours,

FRED H. DAVIS, Attorney General.

NEWSPAPER—STATUS OF—IN WHICH APPLICATION FOR TAX
DEED IS PUBLISHED.

September 9, 1930.

Dear Sir:

This is in answer to your letter of September 4th on the above subject.

Section 1000, Compiled General Laws, provides that no tax deed shall be issued until the Clerk of the Circuit Court shall have given at least thirty days previous notice of the application by publishing the same once a week in some newspaper in the county.

There is nothing in the statute which requires the Clerk of the Circuit Court to publish the notice in the same newspaper as that which has been designated by the county commissioners as a newspaper in which shall be published the notice of the tax sale itself, as provided by Section 3 of Chapter 14572, Acts of 1929, amending Section 969, Compiled General Laws.

The Clerk of the Circuit Court is authorized to publish notice of application for issuance of a tax deed in any newspaper which conforms to the definition of a newspaper as set forth in Section 4901, Compiled General Laws, whether such newspaper has been designated as the official county organ by the county commissioners or not. The same thing is true of other legal notices required to be published by the clerk, with the exception of the official tax sale of the county,

which can only be published in the newspaper which is designated for that purpose by the board of county commissioners.

Trusting this answers your letter, I am

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTIONS—RIGHT TO USE RUBBER STAMP.

October 14, 1930.

Dear Sir:

Replying to your letter of October 11th, on the above subject, I beg to advise that I find nothing in the law which will prohibit the use of rubber stamps for writing in the names of candidates for office on the General Election ballots on the blank lines which are required to be left there for that purpose. At the same time, the Supreme Court has held that merely writing in the name on the ballot is not sufficient, but that the voter must in addition to writing or stamping in the name make a cross mark in front of the name or the vote cannot be counted. Section 331 of the Compiled General Laws requires that this cross mark shall be made with pen and ink or pencil, therefore, the cross mark cannot be placed on the ballot by a rubber stamp. If a rubber stamp is used at all, the voter will have to make a cross mark in front of the name after it is stamped in.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERK CIRCUIT COURT—PAYMENT SHERIFF'S FEED BILL AS PREFERRED CLAIM AGAINST FINE AND FORFEITURE FUND.

November 19, 1930.

Dear Sir:

The statutes of the State are silent as to the order of preference of claims of county officers in the event that the county fine and forfeiture fund is in such condition that all claims against the same cannot be paid, because of a deficit in the fund. At the same time, it appears to me that in harmony with the general law of the State which gives special recognition and preference to those who furnish board, lodging and subsistence to others, there is ample authority for holding as a matter of public policy that a sheriff's bills for feeding prisoners are not only permitted but are required to be preferred as to payment.

The law requires a sheriff to properly feed his prisoners, and the feeding of prisoners may be properly said to be a matter of emergency which cannot be postponed nor neglected. It is indispensable that the sheriff be furnished the means to comply with this duty mandatorily placed upon him.

I am therefore of the opinion that a sheriff's bills rendered to the county for feeding prisoners may be properly and legally preferred and paid ahead of other warrants from the fine and forfeiture fund in the event that the fund is not able to pay all claims against it. In fact, I am inclined to believe that the law would require such a

preference, but as to that it is not necessary to express an opinion on the subject at this time.

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERK CIRCUIT COURT—FEES IN LIQUOR SEIZURE AND CONFISCATION CASES.

November 29, 1930.

Dear Sir:

This is in answer to your letter of November 26th on the above subject.

Section 7628, Compiled General Laws, provides that "the clerks of courts performing duties under provisions of this Article shall receive the same fees as prescribed by the general law for the performance of similar duties, etc." It is further provided that such fees shall be paid out of the fine and forfeiture fund of the same county.

My conception of this provision is that where liquors are seized and turned over to the clerk under the law, he opens up an entry on his progress docket, the same as he would in any other case. Usually the title of the case would be, for example, as follows:

"State of Florida vs. One Case of Whiskey."

He would enter on the progress docket each step of the case up till and including the final judgment of the Court ordering a forfeiture. In short, it is the duty of the clerk of the circuit court to keep a complete record of exactly what appears in each case where liquors are seized and turned over to him. He then charges for keeping this record the same as he would for keeping any other record in an ordinary civil or criminal case. In cases of this kind the forfeited and seized article such as whiskey is deemed in law to be the defendant, there being no personal defendant before the court.

See Seven Barrels of Wine vs. the State, 79 Fla. 1, 83, So. 627.

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERKS CIRCUIT COURT—FEES FOR ENTRY CONVICTION RECORD—NOT ALLOWABLE.

December 10, 1930.

Dear Sir:

This is in answer to your letter of December 4th relating to the above matter.

I am unable to find any statute which provides for the allowance of fees to the clerk for the service mentioned. While the law requires that such a record be kept it is presumed that the clerk will keep such record as incident to his regular duties as clerk, for which he is compensated in part by the price he receives for acting as ex officio county officer and clerk to the board of county commissioners.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CONVICTS—PAYMENT DISCHARGE FEES—WHEN SENTENCE NOT
SERVED IN COUNTY JAIL.

December 18, 1930.

Dear Sir:

Sections 8549 et seq. Compiled General Laws, provides that the Board of County Commissioners may employ persons sentenced to jail by putting them to labor under the terms of the statute.

The provision of law requiring the county to pay to discharged convicts the sum of \$5.00 where the sentence is for four months or more, and the sum of \$3.00 where the sentence is for less than four months in addition to transportation is a part of the law relating to putting convicts to labor under direction of the Board of County Commissioners.

Consequently, the law has no application whatsoever to persons who serve a sentence in jail in the county without ever having been put to labor by the County Commissioners under the terms of the Act.

I am therefore of the opinion that there is no obligation on the county to pay these discharge fees to any convict who has not been put to labor in the manner provided by law.

Trusting this answers your letter of December 13th on this subject,
I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERK CRIMINAL COURT OF RECORD

JURORS—PER DIEM AND MILEAGE IN CRIMINAL COURT.

May 6, 1930.

Dear Sir:

The question presented by your letter of April 25th is whether or not a juror summoned to appear at a particular term of court in a particular week and then excused until the latter part of that week can be paid his mileage for two trips to and from the court house, instead of one, or in lieu thereof whether or not per diem can be paid for the intervening days.

The statutes providing for per diem and mileage of jurors contemplate that the jurors shall receive for each day of active attendance upon the court \$3.00. The statutes further provide that in addition to this compensation "all jurors shall receive 5c per mile for every mile necessarily traveled in going to and returning from court by the nearest practicable route."

Presumptively, a juror who is summoned from a distant part of the county will remain at the county seat during his term of service, and therefore such juror receives but one mileage each way. On the other hand, where the juror has been excused for several days by order of the judge, but has been retained in service subject to jury duty to report back on a later day, it appears to me that he may be paid his mileage for this second appearance upon special order of the judge to that effect.

The law contemplates that the juror shall be paid his mileage necessarily traveled by him. Where the judge of the court by excusing the

juror makes the mileage necessarily traveled consist of two trips instead of one, it appears to me that the juror is entitled to his additional mileage.

In many instances it will be more economical for the judge to excuse the jury for several days and pay mileage for a second trip than it would be to keep them on duty during intervening days. I think either course of procedure is proper under the statute if approved by the judge of the court.

Section 4484, Compiled General Laws, requires the presiding judge to examine and approve the pay roll, one item of which is the number of miles travelled by the juror in performing his duty. I think the Court has a perfect right to approve additional mileage for those jurors who by reason of being excused are compelled to again come to the county seat from some distant part of the county to resume their jury duties.

Trusting this answers your letter of April 25th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERKS CIRCUIT COURT—METHOD OF COMPUTING SALARIES.

December 30, 1930.

Dear Sir:

This is in answer to your letter of December 10th in which you ask me to advise you as to whether or not the clerk of a criminal court of record is justified in concluding a settlement under Sections 2865 et seq. Compiled General Laws, for excess accruing to his office on the basis of the earnings over the entire period of one term of office instead of on an annual basis.

Section 2865, Compiled General Laws, provides that each county official out of the fees of his office shall receive as his yearly compensation from the fees collected specified sums of money, not exceeding in the aggregate more than \$7,500 per year. In my opinion this Act not only limits the amount of money which an officer may receive out of his fees as his compensation, but also guarantees to him the right to receive up to the maximum amount allowed by law for each and every year of the term of office for which he is elected.

While it is made the duty of each officer to pay annually into a special fund of money any excess of the sum to which such officer is under the provisions of the law entitled as annual compensation, there is nothing in the Act construed as a whole to indicate, at least prior to the 1929 Act, that it was the intention of the law to treat each and every year as a separate unit for the calculation of the officer's allowable compensation.

It was undoubtedly the duty of the officer under the 1927 law and prior acts to make reports and payments at the time specified in the law. At the same time, each of these Acts expressly provided that the officer should receive a certain amount of yearly compensation, each and every year out of the fees of his office. This, I interpret to mean that the officer is entitled to receive his full yearly compensation for each and every year of the term for which he was elected out of all of the fees, commissions, etc., collected by him during his entire term.

Stated another way, this means that if the officer has collected a very large amount for one year of his term and has paid over an excess to

the county commissioners for that year, but during a succeeding year has made less, as his net compensation, than what would be the maximum allowed him by law for that year, that in such instance the officer is entitled to recoup the loss of one year against the proceeds of a preceding year in such manner as to equalize and spread his compensation so as to allow him the full maximum amount of yearly salary permitted out of the gross fees received by the officer for his entire term.

This is necessarily so because the officer is entitled to receive his fees out of the money "collected," regardless of when the service was rendered. He is also entitled to receive as the statute says "yearly compensation" for his official services from the "whole" or a part of the fees or commissions so "collected." The word "whole" used in the statute evidently has reference to the whole amount of fees collected for an entire four year term of office or such other term as the officer may have served under one commission.

I am therefore of the opinion that the county commissioners would be justified in concluding settlement of your excess fee account upon the composite statement of your entire four year term of office, allowing you the full maximum amount of "yearly compensation," each year deducting the same from the earnings over the entire period, and thereafter requiring you to pay over the county whatever excess may remain after you have received your full four years' "yearly compensation," as provided for by the law.

I have given this question considerable study, and after mature deliberation I am unable to see how any interpretation of the law can be properly made.

Yours very truly,

FRED H. DAVIS, Attorney General.

CONSTABLES

CONSTABLES—CORONER'S JURY—REQUIRED TO DIRECT WARRANTS TO CONSTABLES.

February 26, 1929.

Dear Sir:

Section 8521, Compiled Laws, 1927, requires that the coroner, upon being notified of the finding of a dead body, within his district, shall make his warrant, directed to the Constable of the District "if there be one" and if not, then to any Constable of the County or to the Sheriff.

Under this statute, it is the duty of the coroner to issue his warrant to the Constable of his District "if there be one" and only in the event that there is no such Constable or that such Constable is not available should the warrant be issued to any other Constable or to the Sheriff.

This rule is subject to the exception that where a homicide has been committed and the offender has been arrested by the Sheriff, who has jurisdiction of the accused, in which case I think the Sheriff should be the person to handle the whole proceeding, including the coroner's inquest.

Trusting this answers your inquiry of the 21st, inst., I am

Yours very truly,

FRED H. DAVIS, Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
FEES—COUNTY OFFICERS REQUIRED TO REPORT

311

March 27, 1930.

Dear Sir:

Section 472, Compiled General Laws, as well as Chapter 14502, Acts 1929, requires that all county officers, which includes constables, to make reports to the county commissioners and to the Comptroller of the amount of fees collected and the disbursements made out of same.

This law will apply to your office as well as other county offices.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CONSTABLES—NO AUTHORITY FOR CUSTODY OF CONVICT CONVICTED IN CIRCUIT COURT.

May 28, 1930.

Dear Sir:

This is in answer to your letter of May 25th on the above subject.

A person who has been indicted by the grand jury and tried or convicted in the Circuit Court is in the legal custody of the sheriff and only the sheriff has authority to take him to Raiford, unless of course the sheriff would be willing for you to act in his stead as a special deputy for the purpose. A constable would have no authority to act in a case like this unless the sheriff directed him to do so.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CONSTABLE—NO AUTHORITY TO COMMIT PRISONER TO JAIL WITHOUT LEGAL ORDER OF COMMITMENT.

October 2, 1930.

Dear Sir:

The law requires that every person locked up in a jail be incarcerated there only under proper legal commitment of a judicial officer. While the Justice of Peace or a County Judge has the right to issue a warrant for the arrest of a prisoner, the authority to arrest is merely a right to apprehend and take the prisoner into custody until such time as he can be taken before either the Justice of Peace or the County Judge who issued the warrant or before some other Justice of Peace or County Judge. Neither a Sheriff, Deputy Sheriff nor Constable has the right to arrest a prisoner, even on a warrant and lock such prisoner up in jail without taking him before a committing magistrate for the purpose of making bail, or for the purpose of having the magistrate determine whether bail is allowable, except, of course, where the prisoner arrested informs the officer that he waives his right to be taken before a magistrate, in which case the original warrant may be sufficient authority for the officer to lock the prisoner up until he can get a proper commitment from the Justice of Peace or other authority issuing the warrant. Section 8339 of

the Compiled General Laws plainly indicates that a commitment is required.

A form of commitment to be used in such cases is prescribed by Section 8452 of the Compiled General Laws.

I think the jailer was correct in the position taken by him as indicated in your letter.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY ATTORNEYS

TAX EXEMPTIONS: WIDOWS "OWNING" PROPERTY VALUED AT \$5,000 AND LESS, EXEMPT.

April 3, 1929.

Dear Sir:

The language of Section 1098, Compiled Statutes of 1927, is that widows "owning" property valued at \$5,000.00 or less shall not be required to pay a license tax for conducting a boarding house. I think that the word "owning" as used in this proviso must be given its ordinary and common acceptation and must be taken to mean that any widow, who does not own property, real, personal or mixed of the aggregate value of \$5,000.00 or more, whether such property is employed in the boarding house business or not, would be entitled to the exemption.

As I read the statute, it means that widows who are not "worth" more than \$5,000.00 in property are intended to run a boarding house without paying a license tax under Section 1098.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CRIMINAL CASES—ILLEGAL TO REQUIRE DEFENDANT TO MAKE DEPOSIT OF MONEY TO SECURE JURY TRIAL.

April 13, 1929.

Dear Sir:

My opinion on the matter of the right to require a defendant in a criminal case to make a deposit of money in order to secure a jury trial in a case in which he is charged with crime is that the constitutional right of trial by jury cannot be denied or abridged by attaching to it any conditions precedent, such as a requirement that a defendant must make a deposit to cover the cost of securing a jury.

Section 14 of the Bill of Rights of the Florida Constitution provides that no person shall be compelled to pay costs except after conviction on a final trial. This does, in my opinion, make it unconstitutional to require a defendant in a misdemeanor case to make a deposit of the costs in order to secure a jury trial. I find this view of the law substantiated by an opinion on this same matter rendered by former Attorney General Rivers

Buford on June 29th, 1925, reported at page 343 of the Attorney General's Report for that year.

Trusting this answers your inquiry of April 9th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAXES: ON SEPARATE PLACES OF BUSINESS UNDER CERTAIN CIRCUMSTANCES.

December 27, 1929.

Dear Sir:

Section 1050, Compiled General Laws, provides for the issuance of State and County license by the tax collector of the county where "the place of business may be located."

Section 1052, Compiled General Laws, provides for the transfer of such license, but specifically says that the license shall not be held good for any longer time or any other "place" than that for which it was originally issued. It seems to me that these two provisions of the law clearly contemplate that a separate license must be procured for each "place of business" in the county and where there is more than one "place of business" that a separate license must be taken out for each.

The license law has been generally construed for many years as requiring a separate license for each place at which business is transacted, whether on a large scale or on a small scale and under this construction it would appear to me that dye works and steam cleaners are liable for a separate license for each separate office or place of business they have in the county. However, under Section 1054, Compiled General Laws, they will only be required to take out one State license with a county license to be collected for each separate office or place of business in addition to the State license.

In regard to the license tax on pressing clubs as provided for by paragraph H, Section 15, Chapter 14491, Acts of 1929, it appears that such tax is applicable to those firms whose principal business is a pressing of clothes, although they may do some dry cleaning. It appears to me that a person engaged in pressing or dry cleaning might take out either a license as a dry cleaner or pressing club and carry on both classes of business, as all pressing clubs do more or less dry cleaning.

The reason pressing clubs were added to the 1929 Law was because it was found that the license taxes provided by Section 1138, and Section 1139, Compiled General Laws, could not be applied to the so-called pressing clubs, inasmuch as they denied that they were dry cleaners or were conducting a dye works or operating a steam cleaner. It was not the intention of the law to put a separate pressing club license on these people in addition to a dry cleaners license, but merely to cover pressing clubs, who could not be reached under the other sections of the law.

Trusting this answers your inquiry, and with the compliments of the season, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—RECOVERY OF BACK SALARY.

January 11, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 9th on the above subject.

It appears to me that the County Commissioners are barred by the statute of limitation on their claim for salary during their previous term of office, unless it was presented within one year as required by law. Of course, if the claim was duly presented within one year, it could be paid if the law provided for a higher rate of salary than the Commissioners actually received.

Trusting this answers your inquiry, and with kind personal regards,
I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE AND
OPERATE AUTOMOBILES FOR USE OF COMMISSIONERS

February 15, 1930.

Dear Sir:

This will acknowledge receipt of your letter of February 12th, on the above subject. Section 2153, Compiled General Laws, gives the Board County Commissioners of each county power to "make such orders concerning the care and improvements of the corporate property of the county as may be deemed expedient." It also gives the Board power to build and keep in repair county buildings, roads and bridges. The grant of the express powers given embraces such unconstitutional powers as may be necessary to be exercised to carry out those given in express terms. The statutes relating to Dade County places the county commissioners on a salary basis and require them to devote all of their time to the county's business. It, therefore, appears to me that if the matter is properly provided for in the commissioners budget that the county commissioners have the authority to purchase and operate automobiles as the property of the county to be used by the members of the Board of County Commissioners in the actual performance of their official duties in lieu of payment of mileage as provided by law.

Trusting this answers your inquiry, and with kind personal regards,
I am

Yours very truly,

FRED H. DAVIS, Attorney General.

FUNDS—TRANSFER OF.

March 17, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 5th on the above subject.

In my opinion, Section 2304, Compiled General Laws, which makes it unlawful to transfer the money or any part thereof from one fund to another fund or to pay from one fund the expenditures legally payable

from another fund, except with the consent of the Comptroller, applies only to the funds themselves and not to the separate items, which may have been set up in the budget as payable out of a particular fund.

For example, money from the road and bridge fund cannot be placed in the general revenue fund or fine and forfeiture fund without the approval of the Comptroller. But insofar as items in the same fund are concerned, Section 2304, has no application. I might call your attention to the fact that under Section 2306, which is an entirely different statute from the other section, the adoption of estimates by the Board gives such estimates the force and effect of fixed appropriations which cannot be altered, amended or exceeded, nor can the expense estimated under one head be paid out of the estimate for any other expense. Section 2306 was intended to deal with items within the several funds. Unexpected expenditures should be provided for in the reservation in the estimates of a reasonable sum for contingencies and emergencies as provided for in the last part of Section 2306. A suitable way for setting up the budget in this respect is to specifically provide in the budget that all unexpended or unnecessary surplusses shall revert to the emergency and contingency fund to be available for expenditure to meet deficiencies in some other budget item.

It is not only against the law to exceed the total amount of a particular fund, but it is just as much against the law, as the Supreme Court held in the Kirkland case, to exceed the amount of an item in the budget unless it is handled under the reservation for emergencies and contingencies.

If you will examine the statute, you will find that the law prohibiting exceeding the entire budget was passed in 1915, while the budget law proper was enacted in 1919.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSES—TAX ON VARIETY PERFORMANCES

March 21, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 18th on the above subject. Section 1245, C. G. L., only applies to theatrical shows, etc., which are held "in buildings fitted up for such shows or exhibitions" or in other words, performances in theaters.

Section 1247, C. G. L. relates to a different kind of exhibition, but does not apply to performances given in tents or temporary structures, as these are covered by Section 1244. It seems that Section 1247 covers principally those places where entertainments are given and refreshments are served in connection therewith, such as roof gardens, cabarets, night clubs, etc.

The question of whether or not a particular performance comes under Section 1244, 1245, or 1247, depends upon the facts of each particular case. If a particular performance falls under Section 1247 in the first instance and such performance consists of an entertainment given for charitable purposes, the proceeds of which are given for charity purposes,

then no license at all is required under Section 1247. In other words, it would appear that the Acacia Club is giving the entertainment for charity purposes, and the proceeds are being used entirely for local charities after deduction of expenses for the performance, then the show being given falls within the purview of the kind of shows covered by Section 1247, namely, that it was a variety performance, then under such circumstances no license at all would be required of the Acacia Club. Otherwise, the tax would be either \$25.00 a night or \$100.00 per annum, with corresponding county taxes.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

JURORS—SUMMONING BY MAIL.

April 7, 1930.

Dear Sir:

Your letter of April 1st on the above subject has been called to my attention since my return to the city.

I do not believe that there is any constitutional objection to Section 4464, Compiled General Laws, for summoning jurors by mail. In fact, all jurors for the Federal courts are summoned by mail and much expense is saved thereby. At the same time, I find that the Statute throughout the State has been construed as being directory only, and that it does not preclude the Circuit Judge from making an order specifically directing the sheriff to summon a venire in the ordinary way.

It seems to me that where the Circuit Judge has made such an order regardless of the theory upon which it was based, and the sheriff has actually performed the services, that he should be paid therefor. The sheriff gets a writ and under the law all he can do is serve it. It is not his duty to go behind the writ and question the right as to whether or not it was properly issued. And when he does serve it it seems to be nothing but fair that he should be paid for his services.

Trusting this answers your inquiry and regretting that I could not get the answer to you sooner, because of my absence from the city, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—AUTHORITY TO EMPLOY LEGAL ADVISER AS LEGAL EXPENSE HIS OFFICE, PAYABLE OUT OF FEES.

April 14, 1930

Dear Sir:

This will acknowledge receipt of your letter of April 10th on the above subject.

I have several times expressed the opinion that county officers such as Sheriff or Clerk of Circuit Court had a perfect legal right to employ or retain an attorney at law and pay such attorney out of the fees of his office as a legitimate expense thereof. I base my opinion upon the following considerations:

Section 2 of Chapter 11954, Acts of 1927, defines the term "net income" to mean the residue of the income from such office after deducting all

reasonable expenditure for the salary of clerks and assistants, and the necessary expenditure for the proper operation of said office. At the time this law was passed it was the common practice of county officers such as the sheriffs and clerks of the circuit courts, whose duties are manifold, and involve many legal complications, to regularly employ and pay private counsel for the purpose of advising them as to their rights, duties and privileges in the execution of their offices. In short, it was a contemporaneous prevailing opinion in effect at the time the 1927 law was passed that employment and payment of an attorney by the county officer out of his fees was a proper and legitimate necessary expenditure for the proper operation of the office.

This is especially true in the case of a sheriff who has to make special returns to process and be constantly advised as to the legality of acts and contemplated acts on his part.

It must therefore be said that since the statute was passed in the light of this practice above referred to that the statute was passed having in mind the recognition of employment of counsel as a proper expense of an office. And in the absence of any language in the statute showing a clear intent to do away with this practice, it appears to me that the statute must be construed as being in harmony with it and as recognizing the legality of such practice.

It has also been the practical departmental construction of all the statutes which have been passed limiting the fees of officers which might be retained by them for their own use, to recognize attorney's fees as being a proper and legitimate expense to be paid out of such fees. This practical construction has obtained ever since the first fee statute was passed in 1921. It has been recognized by the administrative department, the auditing department and other supervising departments of the State Government having jurisdiction over county officers, as well as by the county commissioners themselves, who have never made any legal objection to it.

It seems to me therefore, as clearly sustainable on that ground alone, upon the principles expressed by the Supreme Court in the case of *Bloxham vs. Consumers' Electric Light and Street Railroad Company*, 36 Fla. 519, 18 So. 444.

Trusting this answers your inquiry and with kind regards, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**SHERIFF—DUTIES IN REGARD TO REPORTING FEES RECEIVED
FOR FEEDING PRISONERS**

April 23, 1930.

Dear Sir:

This will acknowledge receipt of your letter of April 10th requesting my opinion on the above subject.

I have previously stated my view to be that the fees provided by law for feeding prisoners are in the nature of a reimbursement to the sheriff for the expense incurred by him for preparation and distribution of food to prisoners, and that the same should not be considered as compensation to the sheriff. This view expressed by me several years ago conflicts with the holding of the Supreme Court of New Jersey in the case of *Board*

of Chosen Freeholders of Hudson County vs. Kaiser, 69 Atlantic 25, where-in it was held that the surplus moneys furnished the sheriff by the county for feeding of prisoners after paying the salaries of deputy keepers, comprise compensation which could be accounted for by the sheriff the same as any other fee. Yet, at the same time, I believe that our statute is susceptible of a different construction and inasmuch as such different construction has been made and followed for several years, I believe it should be adhered to on the principles announced in the case of Bloxham vs C. E. L. Company, 18 So. 444.

The New Jersey case goes so far as to hold that the fees paid to sheriffs for keeping United States prisoners are required to be accounted for by such sheriff as compensation received by him.

Nevertheless, it appears to me that all fees of every kind and description received by the sheriff, whether for feeding prisoners or otherwise, should be reported by such sheriff in compliance with Chapter 14502, Acts of 1929, requiring each county official to render detailed itemized statements showing receipts and disbursements of his office. Unquestionably, fees received by the sheriff for feeding prisoners, whether considered as compensation or considered as reimbursement, are undoubtedly receipts and for that reason should be reported as having been received by such sheriff.

The sheriff should also report in this connection whatever expense has been incurred by him against such fees reported for feeding prisoners, in order that the County Commissioners in examining and considering the sheriff's account may be able to determine from the accounting whether or not the employees of the sheriff, whose salaries are charged against his ordinary fees, are being used for the work of feeding prisoners and a burden thereby cast upon the general fees of the office, which should be paid out of the sums received by the sheriff for feeding prisoners.

In short, the reimbursement allowed the sheriff for feeding prisoners embraces the cost of cooking and distributing the food, including the salaries of jail attendants and cooks, whose services are employed mainly in connection with preparing the food and distributing it to the prisoners.

I think the County Commissioners are entitled to have a report of all the receipts and disbursements of the sheriff's office, in order that they may determine the propriety of any particular allocation of expense. The fact that the receipts are reported does not necessarily mean that insofar as jail fees are concerned that the sheriff will have to pay over any surplus in same to the county, unless the County Commissioners should claim any surplus in such fees as compensation to be accounted for and paid over, and a Court should render a judgment sustaining them in the matter.

Trusting this answers your communication of April 10th, which is similar to a previous request made by you concerning which I have made an extensive investigation thereby delaying my reply, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—PARTY EXECUTIVE COMMITTEES—PLURALITY
SUFFICIENT.

June 9, 1930.

Dear Sir:

Complying with request for my opinion as to whether or not Section 3 of Chapter 13761, Acts of 1929, contemplates the election of members of the party Executive Committees therein mentioned by a plurality or majority vote, I beg to advise as follows:

Section 361 of the Compiled General Laws, as amended by Section 3 of Chapter 13761, Acts of 1929, provides for State, County and Congressional Executive Committee members and refers to their election in the Primary, (note the use of the singular word Primary) held in the year 1914 and every two years thereafter. At the time Section 361 of the Compiled General Laws was originally enacted, only one Primary was contemplated by the law. In re-enacting Section 361 as a part of the 1929 Primary law, the Legislature uses the word "Primary" and not the word "Primaries," as it evidently would have done had the statute contemplated that candidates for election to Committee membership should be subject to both the first and second Primary, which were brought back into effect by the 1929 Act. Section 18 of Chapter 13761, Acts of 1929, provides that the election required by the 1929 Act shall be held and conducted in accordance with the General election laws of the State of Florida.

Section 3 of Chapter 13761 provides for the election, not nomination of members of State, County and Congressional Committees. Section 14 of the Act in requiring that candidates must receive a majority vote in the first Primary or run over again in the second Primary, makes particular reference to nominated and not elected candidates. Section 347 of the Compiled General Laws, which is a part of the General Election laws of the State provides that where a person is to be elected, that person who shall receive the highest number of votes cast for an office shall be deemed elected to such office.

Construing Section 347 of the Compiled General Laws in connection with Section 361 of the Compiled General Laws as amended by Section 3 of Chapter 13761, Acts of 1929, as well as Section 18 of the same Act, it appears to me that insofar as members of State, County and Congressional Executive Committees of political parties are concerned, the person who shall receive the highest number of votes cast for such position in the first primary are to be deemed elected as Committee members, and consequently no second primary is necessary, even though the person who receives the highest number of votes for such Committee position did not receive a majority of the votes cast therefor.

Both the Chairman of the Democratic Executive Committee of the State of Florida and the Chairman of the Republican Executive Committee of the State of Florida, these being the only political parties at present governed by the Florida Primary law, take the position that a plurality vote in the first Primary is all that is required to elect members of party Executive Committees under the 1929 Primary law, I consequently see no reason why their opinions in the matter should not be given the great weight and respect to which they are entitled as indicated by the

Supreme Court in a recent case where the Court held that a practical construction placed upon a statute by those who were affected by it, should be followed where not wholly inconsistent with an otherwise clearly expressed intent. I deem it only fair to state that while two of the prominent members of the 1929 Legislature who had a large part in procuring the enactment of the 1929 Primary law have expressed to me an opinion to the contrary of the above, I find that the majority of the opinions expressed to me by those whom I have consulted for assistance in arriving at my conclusion, have taken the same view as that advanced by the Chairmen of the two political parties affected, consequently I have concurred in the view that candidates for Committee positions do not have to run over again the second Primary, but that the high candidate in the first Primary must be declared the winner.

Yours very truly,

FRED H. DAVIS, Attorney General.

CONSTABLES—TERRITORIAL POWERS OF

July 29, 1930.

Dear Sir:

This will acknowledge receipt of your letter of July 22nd on the above subject.

Section 4595, Compiled General Laws, authorizes any constable of the county to serve process of the county judge's courts and justices of the peace courts in any district of the county where the same may be lawfully served provided that the constable shall not be entitled to greater mileage than he would if the return issued from the court in the district in which the constable resides and for which he was elected.

Section 8323, Compiled General Laws, makes it lawful for any constable to arrest and take into custody without warrant any person who in the presence of such officer violates any of the criminal laws of this State, and makes it the duty of such officer to arrest without warrant and to take into custody any person whom such officer has reasonable ground to believe and does believe has committed any felony or breach of the peace. It appears to me that under Section 8323 there is no territorial limitation on the power of a constable to make arrests without warrants for the offenses committed in the presence of the officer.

Section 8323 seems to make it the duty of every officer of the State including constables to arrest persons who commit criminal offenses in their presence whether they are within their own counties or districts or not. Under this statute I am of the opinion that a constable of the county who finds a liquor still in operation outside of his own district, has power to make the arrest of persons found guilty of violating the law in the operation of such still and to prosecute the same before the county court or county judge's court as the case may be. The power of the officer to make arrests under Section 8323 is not limited to the constable's own district as I see it.

Yours very truly,

FRED H. DAVIS, Attorney General.

AUTHORITY OF COUNTY COMMISSIONERS TO PAY EXPENSES OF
EMPLOYEES ATTENDING MEETING OUTSIDE OF STATE
IN CONNECTION WITH DUTIES

September 22, 1930.

Dear Sir:

From your letter it appears that the Board of County Commissioners have engaged in highway and public road beautification and the creation of parkways occasionally along the side of the public roads, where this is practical. It also appears that one of the employees in charge of this branch of the county work is desirous of securing information and knowledge which will be of material assistance to him in enabling him to better execute his duties, and that it is the desire of the Board to send this employee to a convention of park superintendents or managers to be held in the City of St. Louis the latter part of this month, and to pay the expenses of the employee to this convention in order that such employee may go and there obtain information and data which will be of benefit and advantage to the county in carrying on the work of highway beautification.

In my opinion such expenditure is a proper and legitimate county purpose provided that the county budget is so arranged as to permit the expenditure. The power of the county commissioners to employ the man in question and to fix his compensation, includes the power to pay any expenses which he may incur in connection with his duties.

It has long been the policy in this State for State officers and even members of the Supreme Court to have their expenses paid out of the public treasury to attend meetings and conventions where their official duties and work is discussed, in order that they might better be enabled to attend to their duties by the use of the knowledge thereby obtained.

For example, as indicating the Legislative policy in this respect, you will find item 9 on page 833 of the 1929 General Laws provides an appropriation of \$7,500 annually to pay the expenses of justices of the Supreme Court in the offices and for "expenses attending conferences, bar associations,—."

In other departments the appropriation is made under the head of contingent expenses or incidental funds, but it has always been the practice to expend the appropriation for such purposes. In my judgment it is entirely proper and legal for the county commissioners to pay the expenses of their park superintendent to a national convention of park superintendents and managers in order that he might properly carry out the duties of his employment, by acquiring the latest available information which is to be had on the subject he has to deal with.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE HIGHWAYS—AUTHORITY OF COUNTY TO EXPEND MONEY
TO BEAUTIFY AND MAINTAIN.

September 23, 1930.

Dear Sir:

Under Section 2471 of the Compiled General Laws, County Commissioners are vested with the power of improving and shading the public roads and highways in their respective counties. The provisions of Section

2472, et seq., relating to petition and other proceedings with reference to the same subject are only applicable where it is desired to make it the duty of the County Commissioners to improve and shade the public roads and highways mandatory. As I construe these Sections, Section 2471 gives discretionary authority to the County Commissioners which they may or may not exercise as they see fit, but under Sections 2472, 73 and 74 the County Commissioners may be compelled to do that which would otherwise be a discretionary act on their part. It will be noted that the language of the statute does not limit the powers of the County Commissioners to improving the public roads and highways which belong to the county, but covers all highways which are physically located within the county. The fact that a road may be a state highway and may be primarily maintained by the State Road Department does not destroy its capability of being a county highway and the expenditure of money upon the same as a county purpose as will be seen from the holding of the Supreme Court in the case of *Lewis vs. Leon County*, 91 Fla. 118, 107, So. 146, where the Supreme Court held that a road might be both a State highway and a County highway at the same time. I think that Section 2471 as well as other provisions of the statutes authorize the County Commissioners to shade and beautify the highways in the county if they see fit and have properly provided for such work in their county budget.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS

COUNTY COMMISSIONERS—GUARD AT JAIL—COMPENSATION FOR.

January 11, 1929.

Dear Sir:

I beg to acknowledge the receipt of your letter of January 5th, in which you request my opinion as to whether or not under Chapter 10091, Acts of 1925, the Sheriff can be allowed \$50 a month to apply on account of the salary of the jailor.

By reference to the records of this office, I find that on August 12, 1909 former Attorney General Park Trammell advised that there was no law allowing the Sheriff a guard at the county jail, said guard to be paid for by the county.

Subsequent to this opinion a provision was written into the law providing for guards not more than \$2 per day.

It would appear that the purpose of allowing for guards was to meet the deficiency in the law pointed out by Attorney General Trammell and accordingly, it is the proper allowance for the Sheriff to have \$50 a month, to be paid for by the County, upon the salary of the jailor.

Trusting this answers your inquiry, and wishing you a prosperous New Year, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—EMPLOYMENT WATCHMEN AND TOLL
BRIDGE TENDERS.

January 17, 1929.

Dear Sir:

In my opinion, the laws of Florida relating to advertising for bids for labor and material where the amount exceeds \$300 has no reference to employment of persons to render personal services such as the employment of watchmen, attorneys, or things of that kind.

I am, therefore, of the opinion that the Board of County Commissioners can provide for the employment of such watchmen and other employees as are necessary to operate the toll bridges in your County without being required by law to advertise for the lowest bidder for such services.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSION—OFFICE VACANT WHEN MOVES OUT OF
DISTRICT.

February 26, 1929.

Dear Sir:

Section 461, Compiled General Laws, provides that an office shall become vacant when the incumbent thereof shall cease to be an inhabitant of the district for which he shall have been elected or appointed.

I think that this Section means that the officer in question must have permanent—and not temporarily—ceased to be an inhabitant of his district.

Therefore, if the County Commissioner to whom you referred in your letter of the 21st has only temporarily removed himself from his district he has not vacated his office under this Section of the law but if his removal is permanent he should send his resignation in and if he refuses to do so, the Governor has authority to declare the office vacant and to appoint someone else to fill the same.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

JUDGES—RIGHT TO COMMUTE SENTENCE IMPOSED AT SAME
TERM OF COURT.

March 4, 1929.

Dear Sir:

The Supreme Court has held that after a Judge has sentenced a prisoner and the prisoner has begun to serve his sentence, the Judge has no power to change the sentence already imposed by him and put into execution.

It is lawful, however, for a judge during the same term of court during which the prisoner was sentenced to recall the prisoner and change his sentence to a different one from that which was first imposed; and in a County like Dade County, where the terms of Court run for a long time it is possible for a prisoner to be sentenced and

serve part of his sentence and still the Judge has the power to change it by reducing sentence so as to cause the discharge of such prisoner before the expiration of the original sentence.

Trusting this answers your inquiry of the 25th ult., I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY DEPOSITORIES—SECURITY REQUIRED.

March 9, 1929.

Dear Sir:

I am of the opinion that counties in fixing depositories for moneys credited to Interest and Sinking Fund Account, should secure, as far as possible, 100 percent security for same from the Banks with which the Interest and Sinking Fund moneys are deposited. The statute contemplates this as I read it.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—NO AUTHORITY TO HIRE OR FIRE COUNTY JAILER.

October 15, 1929.

Dear Sir:

The County Commissioners have no authority to hire or fire the county jailor. The county jailor is supposed to be a deputy sheriff and is appointed by the sheriff and paid by him, but he is entitled to receive a certain amount of the pay from the county.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—RIGHT OF MEMBER OF BOARD TO BID ON OR PURCHASE PROPERTY FROM BOARD.

December 31, 1929.

Dear Sir:

I find that this matter was passed upon by former Attorney General W. H. Ellis, under date of November 26th, 1907, and inasmuch as former Attorney General Ellis is now a Justice of the Supreme Court, I consider his opinion in the matter particularly pertinent. I quote the opinion of General Ellis in full, as follows:

"I am in receipt of a letter from Hon. N. B. Broward, Governor, enclosing your letter of the 18th instant to him, and requesting me to communicate with you upon the subject matter of your letter.

You state that application "was made by one of the Commissioners" to lease the prisoners for the term of their sentence, and that you, as Chairman of the Board of County Commission-

ers, objected upon the ground that the law as you understood it forbade the Commissioners to enter into any contract with another member of the Board, or other county officer.

Your position was perfectly correct. Sections 3469, 3470 and 3471, of the General Statutes of 1906, are directed against the practice indulged in by some officers of contracting with themselves for supplies or public work. While these sections do not expressly declare that it is unlawful for the Board of County Commissioners to contract with themselves or any member of the Board for the county convicts; yet these sections reflect the law as it existed, and as it now exists, upon the subject of a trustee or an agent making contracts with himself regarding the property committed to his charge. I think that your objection to this contract was well founded. See *Lainhart et al. Vs. Burr, et al*, 49 Florida 315."

I beg to advise that I fully concur in the opinion expressed by Judge Ellis to the effect that it is contrary to public policy and illegal for members of the Board of County Commissioners to contract with themselves for either the purchase or the sale of county property.

Trusting this answers your inquiry of December 26th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**MUNICIPALITIES—LIABILITY OF COUNTY FOR MAINTENANCE OF
PUBLIC ROAD WITHIN LIMITS THEREOF.**

February 18, 1930.

Dear Sir:

This will acknowledge receipt of your letter of February 17th on the above subject.

In the case of *State vs. Putnam County*, 23 Fla. 632, the Supreme Court held that where a road was properly designated as a county road, the fact that the municipality was established did not revoke or suspend the powers or duties of the County authorities with regard to such road which had been included within the corporate limits of the municipality, nor abolish the road as a public highway, unless the municipality had accepted and made the road a part of its public streets.

It would seem to me therefore that it would be lawful for the county to legally pay for work done on the streets of an incorporated city, when said streets are the continuation of public roads through the town, even though the county has paid to the city its one-half of the money realized from the special road tax, as provided by Section 2453.

In *Duval County vs. Jacksonville*, 36 Fla. 196, the Supreme Court also held that all streets are highways but not all highways are streets.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—AUTHORITY TO EXPEND COUNTY
ROAD FUNDS.

March 21, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 19th on the above subject.

The control of the expenditure of county road funds is under the county commissioners, who have authority to spend the money anywhere they see fit in the county, either in one district or all over the county as a majority of the commissioners may deem proper. Of course, it is presumed that the county commissioners will honestly and fairly distribute the money where it is most needed, but district lines do not necessarily control in this regard.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX SALE—COST OF ADVERTISING DELINQUENT TAX SALE.

April 16, 1930.

Dear Sir:

Answering your letter of April 16th on the above subject, I beg to advise that I do not think that a tax payer can be compelled to pay the cost of advertising a tax sale where the list has not been turned over to the newspaper, but from and after the time it is turned over to the newspaper, I think the payment of the advertising costs may be required, as the newspaper is compelled to proceed with setting up the type for the advertisement, even though no sale is ever held.

The newspaper would be entitled to payment for the advertisement which is turned over to it to be published, even though it is never published. But prior to the time it is turned over, I do not see how advertising costs can be legally enforced, as none would be incurred in such case.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—APPROVAL OF ERROR AND INSOL-
VENCY LIST DOES NOT DISCHARGE TAX.

August 12, 1930.

Dear Sir:

The fact that the county commissioners approve the error and insolvency list of the tax collector does not relieve the tax payer from his liability to pay the taxes, but does relieve the tax collector from any further liability or duty on his part to enforce the collection. In other words, the county commissioners have the right to hold up the approval of the error and insolvency list in order to compel the tax collector to make collections of those taxes which he is able to make before they allow the collector to get the balance of his commissions by approving the error and insolvency list.

At the same time, the tax collector has the right to enforce any tax

lawfully assessed on his books, even though it has been charged off on the error and insolvency list. Such charging off does not relieve the tax payer.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY JUDGES

LICENSES—ISSUANCE OF MARRIAGE AND HUNTING LICENSES.

January 16, 1929.

Dear Sir:

Referring to your letter of January 11th, I beg to advise that it is my opinion that under Section 3339, Revised General Statutes of Florida, the Clerk appointed for the County Judge's court has authority to issue marriage and hunting and fishing licenses, these being non-judicial function. which the Section in question expressly provides can be performed by the Clerk of the County Judge.

With kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE'S COURT—PAYMENT OF JURORS.

March 6, 1929.

Dear Sir:

My construction of the law is that Section 8306 (6012, R.G.S.) Compiled Laws, Florida, is not applicable to County Judge's court under the present system in vogue of securing jurors for such courts.

In my opinion, the jurors in County Judge's Courts are now upon the same status as jurors in the Circuit Court, i.e. they are paid for their services at a particular term of court and the cost of the jury is not chargeable against parties in either civil or criminal cases.

In criminal cases, when a defendant is convicted the Judge may take into consideration, in fixing the amount of fine, the necessity of paying the jury which tried the case but the jury fees should not be taxed as court costs.

Of course in the Circuit Court, the jurors are paid by money furnished by the State but in other respects the principles governing the payment of jurors is the same.

Trusting this answers your inquiry of the 20th ult., I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PROHIBITION—SEIZURE AND DESTRUCTION OF STILLS.

May 20, 1930.

Dear Sir:

Section 7627 expressly provides that there shall be no right of property in intoxicating liquors, nor stills and stilling apparatus used for the unlawful manufacture of the same. Section 7625 by implication recognizes a right in the seizing officer to destroy intoxicating liquors taken into his

custody without an order of the Court permitting such destruction, because that Section expressly refers to proceedings antecedent to any proceedings under Section 7626 and 7627 and requires that the seizing officer shall make and deliver to the person from whom articles have been seized "a true copy of the list of all such articles, together with any intoxicating liquors and beverages taken into custody, seized or destroyed."

The forfeiture proceedings provided by Section 7627 while applicable to liquors and stills and should be followed, are nevertheless primarily intended to cover those things which are not contraband per se, for example, automobiles and the like. Intoxicating liquors and stilling apparatus are contraband per se, and the law seems to imply that the officer has the right, if he wishes to exercise it, to destroy such contraband when and where he finds it, regardless of the adjudication of forfeiture. Of course he does this at his own risk, and his only absolute protection is to follow the procedure outlined by law so as to cut off any possible lawful claim, such as might be asserted under those rare instances which permits lawful possession of liquor, but which do not seem possibly to be applicable to the case mentioned in your letter.

Yours very truly,

FRED H. DAVIS, Attorney General.

**ELECTIONS—CANVASSING BOARD—PROCEDURE UNDER NEW
PRIMARY LAW.**

May 28, 1930.

Dear Sir:

This is in answer to your letter of May 26th on the above subject.

It appears to me that the proper procedure is for the canvassing board to first record absent voters ballots in the proper tally books as contemplated by the original absent voters law. Then after these votes have been recorded to then proceed to canvass the returns including the absent voters ballots. This it appears to me fully complies with the purpose and intent of Section 407, Compiled General Laws, as amended.

Section 407 requires the canvassing board of the county to meet on the 3rd day after any primary or sooner if the returns shall have been received. Absent voters ballots are a part of the returns as much so as the tally books, and where Section 407 has reference to "receiving" the returns it must necessarily have reference to absent voters ballots as well.

My construction of 407 is, that the board should meet at the earliest practical time after the primary and canvass the county vote so that the results may be known to the State canvassing board in order to prepare the ballots for the second primary. It appears to me however, that the language of the statute "if the returns shall have been received" are as much a part of the requirement of the law as the requirement for meeting, and in the event any absent voters ballots are received by the canvassing board after they have completed their canvass, it appears to me that the proper procedure contemplates that a supplemental canvass of these absent voters ballots be sent in to be added to the original return.

There is a duty imposed by law on the canvassing board to canvass every ballot properly voted and properly received. I find nothing in the law which warrants depriving the voter of his vote merely because of a

delay in the mails bringing the vote in. Of course, when an absent voters ballot is received at an unusually late date the canvassing board should scrutinize carefully the postmark to see that it was properly mailed as required by the absent voters law within the time allowed by that law.

Trusting this answers your inquiry and with kind personal regards,
I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—PURCHASE OF COUNTY RECORDS.

October 2, 1929.

Dear Sir:

Your letter of September 18th, has not been earlier answered on account of other pressing engagements.

As your County does not produce enough fees to come within the provisions of Section 4, Chapter 11954, Acts of 1927, which provides a special fund for the purpose of equipping, maintaining and supplying county offices with the surplus fees as are collected by such offices and paid into the county, the question of supplying county records accordingly falls under the General Law, which is Section 1311, Revised General Statutes of Florida.

This section provides that the books of record, blank books and stationery of the various counties of this State shall be purchased by the County Commissioners. As the County Commissioners are required to purchase these books, etc., it would appear that they are the judges of the design, form, quality, etc., of the records, which are to be purchased and which, when purchased, become the property of the county. The County Commissioners are also the judge of the seller from whom the same shall be purchased. In regard to printing forms in the records, which are for the convenience of the County Judge, it would appear that while this cost might properly be paid by the County as a part of the purchase price of the record itself, yet there is no provision of law which will require the County to pay for the extra cost occasioned by the printing and the County Commissioners are within their rights in refusing so to do.

Trusting this answers your inquiry, I am

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS—SALARY—GUARANTEED.

October 5, 1929.

Dear Sir:

Section 2865, Compiled General Laws, guarantees to each county officer a yearly salary out of the fees taken in by his office. There is nothing in the 1929 Act which alters the right of the officer to claim his full yearly compensation of \$8000.00 out of a year's revenue, even though he may be required to report the same at semi-annual periods.

In order to be assured that the officer will get his full \$8000.00 during the year, it would appear that the officer has the right to wait until the end of the yearly period before paying over any part of a surplus

which may exist at the end of the first six months period. The semi-annual reports are apparently only a means of checking up on an officer, but they do not alter his legal right to the fees which the law entitles him to retain.

Trusting this answers your letter of September 26th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—AUTHORITY TO APPOINT CLERK—FUNCTIONS—
NON-JUDICIAL.

October 17, 1929

Dear Sir:

Under Section 5185, Compiled General Laws of Florida, the County Judge may appoint a Clerk of his Court, but the functions of such clerk are limited to non-judicial functions.

The issuance of warrants in criminal cases, the issuance of search warrants, the fixing of bail bonds, etc., are judicial functions, which cannot be performed by such clerk, as they involve the exercise of discretion and judgment on the part of the Judge.

Writs of attachments and ordinary summons in civil cases, including the taking and approving of bonds in civil cases, can be performed by such clerk. The clerk also has power to perform other clerical duties of the county judge, such as issuing marriage licenses and even performing marriages.

To put it another way, insofar as Court proceedings are concerned, the Clerk of the County Judge can do anything for the County Judge's Court, which the Clerk Circuit Court can do for the Circuit Court without the order of the Judge, but in no instance can anybody but the County Judge himself issue warrants and search warrants.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAX—LIABILITY PUBLIC DANCE HALL FOR TAXES.

December 6, 1929.

Dear Sir:

Paragraph (j), Section 15, Chapter 14491, provides a license tax of \$100 on each person, firm, or corporation conducting a dance hall for profit. This license tax can only be collected from those dance halls which are run for profit, either by a charge for admission to the hall or by a charge for the participation in dances held in the hall. If a dance hall is provided merely as an incident to a restaurant or cold drink stand, and the dancing done in the dance hall is entirely free from charge either directly or indirectly, it would not be subject to the tax provided for by the new law.

Trusting this answers your inquiry of December 4th, I am

Very truly yours,

FRED H. DAVIS, Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY OFFICERS—COMPENSATION AND REPORTS.

331

January 12, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 10th on the above subject. There has been a variety of interpretations of the meaning and intent of Chapter 11954, Acts 1927, which is now Section 2865-77, Compiled General Laws. For example, Clerks Circuit Court contend that the compensation they receive as clerks of the several Board of County Commissioners is not to be reported and accounted for under this Act. Some of the County Judges, who receive salaries as Judges of the County Court contend that they do not have to account for their salary under this Act. Clerks of Criminal Courts of Record in some instances have contended that they are holding several different offices and are entitled to the permissible maximum of \$7500.00 compensation for each office. This would make the Clerk of the Criminal Court of Record of some of the counties in the State the highest paid county officer, because some of them hold as many as four separate offices under this theory, which would mean that they would be entitled to a gross compensation of \$30,000.00 per year. On the other hand, the sheriff of a county not having had but one office bestowed upon him would be limited to \$7500.00 as a maximum for everything done by him.

I happened to be a member of the Legislature which passed the 1927 Law. My understanding of it was that it was intended to apply to every county officer, who received fees as part of his compensation and to put every county officer upon exactly the same and an equal basis as to compensation. That is, that no particular officer should receive more than any other particular officer as a maximum. Furthermore, I am convinced that if the matter is ever taken into Court that the Court will follow that construction of the Act in the case of a contest. Whenever I undertake to advise county officers in a matter of this kind, I do not want to be in the position of advising them to do that which is of doubtful validity or which would be thrown out in the Courts thereby bringing both the county officer involved and this office into criticism. My interpretation of the existing laws of the State is that such statutes require county officers to report and account for all fees or commissions received by them in their official capacity under color of office and to limit such county officers to the amounts specified in the statutes. It appears to me that since you receive the fees mentioned in your letter under color of office, that they are to be deemed a part of the compensation accruing to you as an officer and, therefore, should be accounted for as such.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSES—TAX ON SEWING MACHINE AGENTS.

February 10, 1930.

Dear Sir:

Section 1055, Compiled General Laws, covers the license taxes, which are required of agents for sewing machines. There is a difference be-

tween a dealer and a agent. The dealer usually buys property and then re-sells it at a profit, while the agent simply represents the concern manufacturing the machines. Under Section 1055 a Singer Sewing Machine agent is required to have a license under this section, unless he is a merchant who carries the machines in stock and sells them as a part of his general mercantile stock.

Under the 1929 license law, Chapter 14491, radio dealers, phonograph dealers and dealers in cash registers are required to have the license prescribed by paragraph "F", Section 8, Chapter 14491. You will notice that this license only applies to those engaged "in the business of selling" cash registers, talking machines, etc. Therefore, a merchant who merely handles some of these articles as a part of his ordinary mercantile stock would not be required to have a license under this section of the law unless he makes that a substantial part of his business and operates it as such.

Trusting this answers your letter of February 4th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSES—PUBLICATION OF OCCUPATIONAL LICENSE LIST.

March 14, 1930.

Dear Sir:

Your letter of march 7th on the above subject has been called to my attention.

I have previously expressed the opinion several times that under Section 1275, Compiled General Laws, it was the duty of the county judge to cause the publication once a year in a newspaper of a list of the names of each person paying an occupational license in the county, the amount paid by each and the date of each payment and the business or profession for which the same was issued, said statement to be filed by the tax collector and county judge. Payment for this is made two-thirds by the State and one third by the county. The purpose of the publication is to advise the public at large the names and amounts of occupational license taxes paid in the county, in order that the public may know whether or not all persons subject to such occupational license taxes have had the taxes collected from them.

Section 1276 requires this same information to be reported to the grand jury of the county, and the apparent purpose of publishing the first mentioned notice was in order to have the public able to report to the grand jury the name of any person who has been doing business in the county without paying the required license. I think the Statute is mandatory and that it is the duty of the judge to carry it out. The State will pay its proper share of the expense without question.

Yours very truly,

FRED H. DAVIS, Attorney General.

GAME COMMISSIONER—JURISDICTION OVER FISH PROPAGATED
IN PRIVATE LAKE.

May 7, 1930.

Dear Sir:

Answering your letter of April 29th on the above subject, I beg to advise that I am of the opinion that where a lake is a private water so small as not to be under the jurisdiction of the State Fish & Game Commission that fish propagated therein are not subject to the State Fish & Game law, and no license is required to sell fish caught from such a lake. Neither is such a lake subject to a closed season on fishing.

However, in order to fall within the above ruling, the body of water would have to be so small as to practically not be a lake but a mere pond. The fact that a man owns all the land around a lake gives him no title to the fish within the lake, if it really amounts to a public body of water.

Very truly yours,

FRED H. DAVIS, Attorney General.

BUDGET LAW—APPLICATION TO CERTAIN COUNTY FINANCES.

May 10, 1930.

Dear Sir:

This will acknowledge receipt of your letter of May 6th on the above subject.

While the law requires that county commissioners shall estimate their probable sources of revenue, not only from taxation but from every other source including fines and costs, and shall include the same in their budget, the law also makes provision for those cases where the county commissioners either under-estimate or over-estimate the probable revenues and expenses.

The budget law of course applies to all the county funds handled by the county commissioners. This means that the law applies not only to tax money but to gasoline money and every other source of revenue received by the commissioners including fines and costs paid in criminal cases as a part of the fine and forfeiture fund.

In preparing the county budget the commissioners can estimate about how much will be received in the fine and forfeiture fund from fines and costs based upon experience of previous years. But if they under-estimate the amount which will be received or over-estimate the same, the law makes provision for this contingency by providing that the commissioners shall be allowed to make in their budget a specific reservation in a reasonable amount for emergencies and contingencies, and also provides that if more money is collected than the budget estimates will be collected then such surplus funds collected in excess of the amounts estimated in the budget shall be expendable for any lawful purpose. See Section 2303.

This means, for example, that if the county commissioners estimate they will receive \$2,500 in the fine and forfeiture fund in a particular year and estimate the \$2,500 will be expended during the particular year, that if as a matter of fact \$3000 is received instead of the \$2500 estimated and the expenses against the fund run to \$3000 in place of the \$2500 estimated the excess of revenue in the one instance on a fixed liability like court costs will counter-balance the excess revenue in the second

instance, and the expenditure of such excess is lawful under Section 2303, which only prohibits spending more than the amount mentioned in the budget "unless more than ninety-five per cent should be collected."

On the other hand, if the revenue runs short, that is, the bills which accrue exceed the amount of revenue during a particular year, the commissioners not only have the power but it is their duty to provide for the payment of this unpaid indebtedness in their next succeeding budget.

Of course, I am talking now about fixed liabilities which the law absolutely requires to be paid, such as court costs for officers and not the making of contracts for labor and materials which could be left unmade if the money is not sufficient to take care of them in a particular year. Whatever county indebtedness is carried over from one year into another year as unpaid, so as to require a special tax levy thereof, should be carried under the head of "outstanding indebtedness" and a tax levied for the purpose of retiring such outstanding indebtedness as such.

If you will notice in Chapter 14578, Acts of 1929, that act provides that the county commissioners shall levy "each outstanding indebtedness fund not more than is necessary to pay such indebtedness and the interest thereon." The outstanding indebtedness fund referred to relates not only to time warrants, bonds, etc. but to any unpaid account against the county which the county was not able to pay during the previous fiscal year.

There are also occasions when funds may be transferred with the consent of the Comptroller, in order to pay fixed accounts such as bills against the fine and forfeiture fund. For example, if the board had a thousand dollars in the agricultural fund which it was not going to use, during a particular year and there were a thousand dollars in excess bills against the fine and forfeiture fund which were not anticipated in the budget but which are fixed liabilities against the county, then with the consent of the Comptroller the thousand dollars could be transferred from the agricultural fund and placed in the fine and forfeiture fund. This would make a thousand dollars excess in the fine and forfeiture fund which could be spent under Section 2303 as money "collected" in excess of the ninety-five per cent budget estimate.

Trusting this clarifies the matter, I am

Yours very truly,

FRED. H. DAVIS, Attorney General.

STATE OR COUNTY OFFICES—AUTHORITY OF TO HOLD RESERVE
OFFICERS COMMISSIONS IN U. S. ARMY.

July 23, 1930.

Dear Sir:

Your letter of July 12th has been called to my attention since my return to Tallahassee, as a matter of fact, I have been away attending annual encampment of the Florida National Guard, in which I hold a commission as Major. I also hold a commission in the Officers Reserve Corps corresponding to my commission in the Florida National Guard.

It seems to me the clear intent of the proviso to Section 15 of Article XVI of the State Constitution which authorizes militia officers to be elected or appointed to fill any legislative or judicial office is to permit State and county officers to hold military commissions without

falling within the terms of the prohibition of the first portion of Section 15 of Article XVI of the State Constitution. The Supreme Court has held that the practical construction of the Constitution long acquiesced in is of great weight, if not absolutely conclusive. There are a number of officers in Florida who hold reserve commissions in the United States Army under a practical interpretation of the Constitution to the effect that the provisions of Section 15 of Article XVI of the Constitution permits them to do so. For example, Judge W. S. Collins of Titusville is a Captain of the Infantry in the Officers Reserve Corps. R. A. Gray, Secretary of State, is a Captain in the Quartermaster's Division of the Officer's Reserve Corps. Louis W. Strum, Justice of the Supreme Court, holds a reserve commission as a Commander in the United States Army. Judge C. C. Chillingsworth of West Palm Beach holds a reserve officer's commission in the United States Navy.

Personally it seems to me clear that the holding of a reserve commission is permitted under the express terms of Section 15 of Article XVI of the State Constitution. The word "militia" as will be seen by reference to the legal dictionary includes citizens and soldiers of every kind and character.

Trusting this answers your inquiry and with kind personal regards, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—DUTIES REFERENCE APPROVING ACCOUNTS OF ADMINISTRATORS.

July 30, 1930.

Dear Sir:

Your letter of July 15th came to my office while I was away at military camp. I am just now able to answer the same.

The general interpretation placed on Section 5599, Compiled General Laws, by members of the bar generally and by most of the county judges, is that Section 5599 prescribed a mere statute of limitations which prevents the enforcement of claims against an estate or the executive administrator thereof, unless the same are duly sworn to and presented to the county judge within the time fixed by law. In short, Section 5599 prescribes a method by which a claim must be presented and approved, if it is intended to enforce it against an estate.

On the other hand, if the administrator or executor is convinced that the account is proper and correct, I think he is authorized to pay the same and secure approval thereof under Section 5551, notwithstanding the fact that it was not presented and filed with the county judge under Section 5599.

Of course, this does not mean that after the time limit fixed by Section 5599 has expired that any executor or administrator has authority to waive the provisions of Section 5599 by approving and paying claims not presented in accordance with that Section. The idea I mean to convey is that at any time within twelve months from the time of the publication of the notice mentioned in Section 5599 the executor has power to pay claims presented to him, even though they are not presented in the form required by Section 5599, but I do not

think the executor has the right after the twelve months have expired to waive the legal limitation which the law has raised for the protection of the estate.

This means of course that under Section 5551 the county judge ought to disapprove any claim which was not presented in the form required by Section 5599 within the time allowed by that Section, unless the claim was allowed and paid by the administrator before the expiration of the twelve months. This is my judgment of what the law means and I think it is the practice which is followed in most of the counties in dealing with the subject.

Trusting these views will be of assistance to you and with kind personal regards, I have the honor to be

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—PROSECUTION FOR VIOLATION GAME AND FISH
LAW—NO DUTY ON STATE ATTORNEY TO PROSECUTE
CASE FOR MISDEMEANOR

August 1, 1930.

Dear Sir:

This will acknowledge receipt of your letter of July 30th, making inquiry on the above subject.

Where a county has no prosecuting attorney, the case will have to go to trial without anyone representing the State. There is no duty on the State Attorney to prosecute any case for misdemeanor before the County Judge's court not any authority that I am able to find that authorizes the State Attorney to employ a special prosecutor to represent the game and fish department at the expense of that department.

I might call your attention to the fact that Section 2155 of the Compiled General Laws, Chapter 10206, Acts of 1925 empowers and *requires* the County Commissioners to employ an attorney to prosecute all persons in the County Judge's court. In view of the fact that the 1925 law *requires* the County Commissioners to have a prosecuting attorney for the County Judge's Court, it appears to me that the game prosecutions mentioned in your letter should be prosecuted by such *required* prosecuting attorney at the expense of the county.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—EMPLOYMENT OF ATTORNEY WHERE
NO COUNTY COURT OR CRIMINAL COURT OF RECORD.

August 14, 1930.

Dear Sir:

Section 2155 of the Compiled General Laws of Florida requires the board of county commissioners of the several and respective counties of the State, wherein there shall be no county or criminal court of record, to employ an attorney at law to prosecute all persons, firms or corporations charged with the commission of any kind of offense against the laws of the State before the County Judge's Court.

There is no statute specifically defining the duties of such attorney other than that of prosecuting all criminal cases tried before the county judge in such counties. The statute, however, contemplates a contract between the county commissioners and such attorney, and it may be that such contract might stipulate or define just what the duties in connection with such trials might be.—That is, whether such attorney should prepare the affidavits and investigate cases preliminary to the issuance of warrants thereon. I know of no instance, however, where this is the practice.

Yours very truly,
H. E. CARTER, Assistant Attorney General

COUNTY JUDGE—PRISONERS TO RECEIVE CREDIT ON SENTENCE
IMPOSED FOR FINE AND COST FOR TIME IMPRISONED
IN JAIL.

August 25, 1930.

Dear Sir:

Section 8557 of the Compiled General Laws of Florida entitles prisoners to receive credit on the sentence imposed for fine and costs for the time imprisoned in the county jail in lieu or as an alternative of the payment of such fine and costs.

The statute requires that the Court in imposing sentence for fine and costs shall also provide imprisonment as an alternative in case of default in the payment of such fine and costs, and as I understand the meaning of Section 8557, it is that where fine and cost has been imposed and an alternative jail sentence in default of the payment of said fine and cost, and the party is put in jail under such sentence upon his failure to pay the fine and cost, and so imprisoned for half the time imposed, that he may then take credit for half of the fine and cost and pay the other half and be discharged.

This is my construction of this particular statute and it only applies in cases where sentence has been imposed upon conviction duly had.

Yours very truly,
H. E. CARTER, Assistant Attorney General.

COUNTY JUDGE—LICENSE TAX ON DANCES GIVEN BY
FRATERNAL ORGANIZATIONS

September 3, 1930.

Dear Sir:

Your letter of August 20th on the above subject came to my office while I was out of the city, and in my absence my assistant, Judge Carter, wrote to you about the same. It appears from his reply that possibly he did not cover the exact question you wish to ask. Therefore, I am writing this letter as supplementary to what he said.

My construction is that Section 1279, which provides a license tax of \$100 on each person, firm or corporation conducting a dance hall for profit, would not apply to a mere fraternal association such as the Woodmen of the World, which in the eyes of the law is neither a "person firm or corporation" within the purview of the license law referred to.

I do not construe the statute in question as covering occasional dances held at irregular intervals by fraternal associations, and the like,

even though an admission is charged to the dances, and such dances are held possibly at regular weekly intervals. The Women's Club in Tallahassee and other places makes a practice of holding such dances and charging admission thereto, but it has never been considered that they were subject to license for operating a dance hall under the 1929 law.

In my judgment, your local Woodmen of the World Camp would be entirely within its rights in holding a dance once a week and making a charge therefor for the purpose of raising funds to purchase uniforms without taking out a license for a dance hall.

With kind regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

CRIMINAL COURTS—PAYMENT WITNESS FEES TO CITY POLICE OFFICER.

September 22, 1930.

Dear Sir:

This will acknowledge receipt of your letter of September 17th suggesting the inquiry as to whether or not it is legal for police officers of the City of Miami who are paid a regular salary for their services as such to be paid in addition thereto witness fees for appearing as witnesses in the Criminal Court of Record in cases tried in that Court.

Perhaps the best answer to the inquiry is to point out the fact that for a number of years the law has been construed by various officials who have administered it as authorizing such practice. In a recent case, the Supreme Court held that a continued long standing, contemporaneous and practical interpretation of a law might be of conclusive force as a construction of it in the absence of some clear language to the contrary. See *State ex rel Comfort vs Leatherman*, 128 So 21.

The statutes relating to the payment of witness fees do not except from their operation the payment of such fees to police officers, even though they are paid a salary as such officers. Neither do the statutes except the payment of witness fees to other officers such as deputy sheriffs and the like. There are a few instances where the Legislature has made such an express exception, and in each instance such exceptions have been specifically stated. See Section 6656, Compiled General Laws, for an example of such an exception.

Under the doctrine of *expressio unius exclusio alterius*, it would appear that this is a legislative construction to the effect that police officers can obtain such fees where the statute is silent as to excluding them from the benefits of such fees. The matter might of course be handled by the police Department of Miami, which would have authority to employ its policemen under such circumstances as to compel them to waive making claim for or collecting witness fees from the county. This would of course be a part of their terms of employment by the city.

At the same time, in the absence of any such special provision either by the City of Miami or by an act passed by the Legislature, I think it

clear that police officers attending a criminal court of record *under process* as witnesses are entitled to be paid their witness fees, notwithstanding the fact that they are also receiving a salary during the same period for their work as policemen.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—AUTHORITY TO DISPENSE WITH ISSUANCE OF
VENIRE WHEN NO TERM COURT TO BE HELD

October 24, 1930.

Dear Sir:

This will answer your letter of October 21st on the above subject.

While the law does not provide that the county judge shall issue a venire every month for a jury for the county judge's court for the next succeeding month, there is nothing which I am able to find in the law which precludes the county judge from making an order continuing a particular term of court and directing that the venire drawn for that term be not executed.

In fact, it is one of the inherent powers of any court to dispense with a term of court when a reason therefor exists. In cases where a term of court is dispensed with by the judge, there is of course no reason why he should draw a jury for a term of court which is not to be held. His failure to draw such a jury is covered by Section 4469, Compiled General Laws, which provides that in such cases the county judge may upon the convening of the term, then and there proceed to draw from the box a jury for that term. It is the duty of the county judge to draw a jury in the manner provided for by Section 4467 in every case where there is a term of court to be held. But where the term is by the judge through a proper order dispensed with, then the judge in his order may dispense with drawing of a venire under Section 4467, and proceed to draw one later under Section 4469.

Trusting this answers your letter and with kind personal regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL LAWS—VEHICLES REQUIRED TO STOP WHEN SCHOOL
BUS LOADING OR UNLOADING CHILDREN

November 14, 1930.

Dear Sir:

This is in answer to your letter of November 6th on the above subject.

The courts have all held that the intent of the Legislature as evident from the language of a statute is the law and is to be enforced according to such intent. Applying this rule to Chapter 14552, it appears that the primary purpose of the law was to protect school children who are about to get on board or alight from a school bus while operating along the roads or highways of the State.

This statute must be construed in connection with the statute which provides that vehicles when halted shall not be halted on the traveled portion of the highway, but shall be halted wholly or partly off of the pavement. It must be presumed that the school bus is going to comply with the law by not stopping upon the pavement in violation of the law. This being true it must be presumed that Chapter 14552 applies to a school bus, while such bus is stopped and engaged in taking on or discharging school children upon any part of the road or highway, that is, considering the entire right of way as the highway and not merely the paved or traveled portion of it.

The Legislature no doubt recognized that even if a school bus was stopped entirely off of the paved portion of the highway that some child might step from behind it on to the highway in an effort to cross it, and be killed by an approaching automobile. For this reason the law requires that motor vehicles must stop when approaching a school bus engaged in discharging or taking on school children, and I think the law applies whether the bus is stopped on the pavement or partly on the pavement or entirely off the pavement, so long as it is engaged in taking on or discharging children. In every city and town in the State automobiles are required to stop when approaching a street car which is halted, the reason being precisely the same as that which actuated the passage of Chapter 14552, and that is to protect persons who might alight from the halted vehicle into the path of the moving one.

I do not think that the element of intent enters into the offense at all. The law imposes the mandatory duty on the automobile driver to bring his vehicle to a full stop before passing the school bus. His failure to comply with the requirement is sufficient to make out the offense, regardless of what intention he had in not doing so. The only intent involved is the intent to do the thing which is prohibited, and that is to pass a school bus without stopping. Such intent of course would be shown by the fact that the motor vehicle passed without stopping.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

HUNTING—ON HOMESTEAD WITHOUT LICENSE

November 25, 1930.

Dear Sir:

This is in answer to your letter of November 21st on the above subject. A portion of Section 20 of Chapter 13644, Acts of 1929, reads as follows:

"No license fee shall be charged any resident of the State of Florida to take game in the county of his or her residence on the homestead of his or her husband or wife or his or her minor children or child."

Undoubtedly, the term "homestead" used in this Section was loosely used and it should probably be construed as referring to "home place," whether owned by husband or wife or minor children or child. Theoretically, a family can have but one legal homestead. The title to this

homestead, however, may be either in the husband or wife or in the husband and wife jointly, or in one of their minor children, or in their children as a whole.

In my opinion the statute should be construed in the light of this evident purpose which means that a husband or wife may hunt on their own homestead without a license. I also am of the opinion that the words "or his or her minor children or child" have reference to the state of title of the homestead, which is occupied by the family. In other words, the fact that the title to the property is in a child or children will not defeat the right of the mother or father to hunt on the land without a license. I am unable to see, however, where it could be contended that a husband and wife may have separate homesteads, because such an idea is wholly contrary to any legal or practical conception of the term "homestead" as used either in common parlance or with legal significance.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY SOLICITOR

GAMBLING—DEVICE—WHAT IS NOT UNDER FACTS STATED.

January 1, 1929.

Dear Sir:

Complying with your request of December 8th, 1928, for my opinion on whether or not any violation of the laws of Florida is shown by the operation of the hereinafter described machine under the particularly stated facts outlined, to-wit:

"The machine in question is a machine or device known as a merchandise vending machine. It is so constructed as to give a uniform package of merchandise of equal value for each nickel deposited in the machine. It is operated by depositing a nickel and operating levers, the machine automatically delivering to the purchaser a package of merchandise and the showing of his horoscope. In every instance, when the machine is operated with a nickel, the purchaser receives a standard package of merchandise which has a uniformly fixed commercial value of five cents, and there is no element of chance involved in the operating of the machine for the reason that the purchaser, upon the deposit of a nickel, receives a certain uniform and fair return in value for each coin deposited therein, and, further, because the prospective purchaser is advised in advance of each operation, by an automatic enunciator plainly and exactly what return he will receive as a result of the operation, and in no instance does the prospective purchaser fail to receive full compensation, by way of merchandise, for everything of value deposited in the machine. In addition to the five cents package of merchandise, received by the purchaser, when he operates the automatic vender with a nickel, he may also receive certain checks which are plainly stamped "FOR AMUSEMENT ONLY." This token has no cash value, or trade value, but is automatically delivered to him by the machine

at the same time he receives the five cents package of merchandise, and these tokens or checks are delivered by the machine for the purpose of obtaining another horoscope after the customer has been allowed to play the machine by means thereof for the purpose of obtaining such other horoscope, but no more merchandise. These tokens or checks have no value whatsoever, either for cash trade or merchandise, but their sole purpose is for re-deposit in the machine, as a result of which the horoscope or fortune then showing may or may not change. In each and every instance a customer is advised in advance of each operation, by the automatic enunciator on the vendor, whether or not he will receive any tokens or checks in addition to the merchandise, and if so, how many. The machine, as stated, does not give any merchandise whatsoever for these amusement checks, but these checks are simply for the amusement of the player for the purpose of causing to be displayed upon the machine various horoscopes; their purpose, as I take it, being an inducement for the sale of merchandise, and for trade, and for return of the customer's patronage. It also appears that if the saleable supply of merchandise in said machine becomes exhausted it is impossible to use or operate it until such supply is replenished."

I beg to advise that in my opinion, the operation of machines of the character described and under the circumstances above outlined, as stated in your letter, does not violate any of the provisions of the laws of Florida relating to and prohibiting gambling and that upon the proper payment of license fees applicable to the operation of slot machines, it will be entirely lawful and proper to operate such machines in this State under the facts above stated.

Trusting this answers your inquiry for my opinion in the matter, which is given pursuant to the statutes in such cases made and provided, I have the honor to be

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE ATTORNEYS—CERTAIN OPERATIONS BEING VIOLATION
OF GAMBLING LAWS—UNLAWFUL.

December 10, 1929.

Dear Sir:

Your letter of November 22th asking my opinion on the above subject has remained unanswered up till this time because of the fact that I have been engaged in preparing defenses to various matters of litigation, attending Board meetings, etc., which have prevented my giving your question the study and investigation which a matter of such importance required.

Section 131, Compiled General Laws, provides that the Attorney General shall exercise general superintendence and direction over the several State's attorneys and whenever requested "shall give them him opinion upon any question of law." In Counties having Criminal Courts of Record the statute is applicable to County Solicitors as well as State attorneys.

In the case of Pompano Horse Club vs. State, 111 So. 801, the Supreme Court of Florida considered the gambling statutes of the State as applied to the pari mutuel system of betting on horse and dog races and held that:

"When a group of persons, each of whom has contributed money to a common fund and received a ticket or certificate representing such contribution, adopt a horse race, the result of which is uncertain, as a means of determining by chance, which members of the group have won and which have lost upon a redivision of that fund, each contributor having selected a stated horse to win such race, the redeemable value of the certificate so obtained and held by the contributors of such fund being varied or affected by the result of such race, so that the value of some is enhanced, while that of others is reduced or destroyed, the original purchase price of all having been the same, those who choose the winning horse being paid from the fund so accumulated, more than they contribute thereto, by dividing amongst them the money contributed by those who choose losing horses and who therefore receive nothing, that process constitutes a game of chance "and those who buy, sell, or redeem such certificates, for the purpose and in the manner stated, are engaging in such game of chance within the contemplation of Section 5639, Revised General Statutes. The acts just outlined constitute gambling as defined and prohibited by Section 5514, Revised General Statutes."

Therefore, under the holding of the Supreme Court of Florida, any system, scheme or device, by which a group of persons contribute to a common fund in equal proportions with the understanding that the common fund so raised is to be redistributed back to the contributors in different proportions depending upon the result of a horse or dog race, is gambling and is prohibited by the laws of the State of Florida, and no subterfuge or evasion practiced in the manipulation of any such scheme which merely disguises, but does not eliminate, the essential features thus held to constitute a game of chance, violative of the law will avail the offenders as a defense against being criminally prosecuted for such violations.

The question presented by your letter is whether or not an operation of two separate corporations not having interlocking directorates, is violative of the law as above construed by the Supreme Court when engaged as follows: Corporation "A" is a general corporation having a Florida charter. It has no connection with any amusement park, whether it be baseball, diamond ball, foot ball, horse races, dog races, vaudeville or other amusement enterprises. It does however lease the grandstand at a park where dog or horse racing is being carried on and there offers for sale to the public attending the races, reserved seats in the grandstand together with shares of its preferred stock of no par value in accordance with charter powers given to the corporation in its charter. There is no connection on the part of corporation "A" with the carrying on of any of the amusements or races taking place in front of the grand stand, and the stockholders and

directors of said corporation "A" do not participate nor have any connection in such amusements nor races, nor do they or the corporation participate in or give any purse, premium or prize in any of the races or other contests. The profits of corporation "A" are made from the sale of grandstand seats to the public, and with each grandstand seat is sold one or more shares of the no par value preferred stock of the corporation, the stock holders purchasing such preferred shares of stock being entitled to participate in the profits realized from the net earnings realized from the sale of the grandstand seats and from no other source. There is no gambling in any manner, shape or form connected with the conduct of the contests or races so far as the corporation or its officers or agents is concerned, but the Board of Directors of Corporation "A" are given the right by the charter of the corporation to purchase and retire from the holders of preferred stock any stock of whatever series then outstanding, at the option of such directors. Such right to purchase back such shares of stock is reserved to the Board of Directors in the charter and is specifically set out in the shares of the stock which are sold, such shares being actually issued to the purchasers in the usual stock certificate form incident to corporate shares of stock applicable under the circumstances. However, there exists a second corporation known as corporation "B" with different stock holders and different directors from those of corporation "A" just referred to, which corporation "B" is chartered under the laws of Florida with charter power giving it the right to buy and sell securities, stocks, bonds, etc.; corporation "B" will from time to time as it desires purchase from the public or others shares of stock which have been issued and sold to the public by corporation "A" from the holders thereof, the amount and character of such purchases being entirely at the option of corporation "B" which will buy certain series of shares, as it elects, but without any agreement with corporation "A" that it will buy any particular shares or series, or according to any particular plan or agreement. After corporation "B" has acquired any share or shares of the stock of corporation "A", corporation "A" may buy or redeem from corporation "B", which is the owner of the shares by purchase, all the shares of stock of corporation "A", which corporation "B" has purchased, presumably paying therefor the same or a higher price than was paid for such shares of corporation "A" by corporation "B". In this connection it is stated that corporation "B" is an investment company chartered to deal in stocks and bonds, while corporation "A" is solely an amusement company in no way connected or identified with corporation "B" by interlock directorates or otherwise. Neither of such corporation is the owner of the amusement park or race track, nor does it put on or conduct the amusements or races which are held.

In your letter you state: "I would like to have from you an expression of opinion as to whether or not the . . . plan would violate any of the gambling laws or criminal laws of this State."

The question you ask is one concerning which I have great hesitation in making an answer because of the possible influence my opinion thus expressed may have, although it would not be conclusive, yet the Statutes of the State do not permit me to follow my natural

inclinations in the matter; therefore, I will give you my best judgment in the matter with the express declaration, of course, that my opinion is advisory only and that it is entitled to only such weight as several officers of the several counties care to accord it.

In my opinion there is no violation of the gambling laws of the State involved in the above outlined operations as set forth in your letter, but such violation might be established should there be material departures from the operations as outlined, or should the same be so carried out and manipulated as a mere subterfuge to cover up a scheme by which the shares of stock sold would in fact represent certificates of participation in the re-distribution of a common fund raised from contributors, whose shares would be raised or decreased as the result of a horse or dog race or other contest, under circumstances falling within the ruling of the Supreme Court in the case first above cited.

Trusting this answers your letter, and regretting the delay which was unavoidable, I have the honor to be

Yours very truly,

FRED H. DAVIS, Attorney General.

JUSTICE OF THE PEACE

CONSTABLES—RIGHT OF TO TAKE AND APPROVE CERTAIN BONDS

October 18, 1929.

Dear Sir:

This will acknowledge receipt of your letter of October 17th, with reference to the above subject.

At the outset, it must be borne in mind that there are several kinds of bonds, which may be taken in a criminal case. For example, there is an Appearance Bond, which is taken by the sheriff or constable when he arrests a prisoner, which bond is conditioned for his appearance before the Justice of the Peace for hearing or trial.

There is another bond, which is given by the prisoner for his appearance before the Criminal Court after he has been arrested and bound over by Justice of the Peace for trial in the Criminal Court. Both kinds of bonds may be generally classified as bail bonds.

Section 8294, Compiled General Laws, provides that the Constable shall be executive officer of the Justice of the Peace Court. As such, he is authorized to execute warrants of arrest issued by the Justice of the Peace. See Section 4595, Compiled General Laws.

In *ex parte Hatcher*, 86 Florida 330, the Supreme Court held that it was the constitutional right of a prisoner when taken into custody on process, to give bail for his appearance and that this right could be enforced by habeas corpus. It so happens that this particular case is one, which I myself took before the Supreme Court on this question. The effect of this case is to hold that since a prisoner has the constitutional right to give bond when arrested that it is, therefore, the duty of the arresting officer to take such bond. Now, if the arresting officer is a Constable, who is serving the warrant, it is the duty of such Constable to take bond from the prisoner he arrests and before he can take bond, he must, of course, approve the same. This refers to the original bond, which the prisoner gives when he is first arrested.

Under Section 8333, the Justice is required to make an examination of the complaint and if good ground is found therefor, he must hold the accused person to bail. This holding to bail is enforceable under Section 8339 by the Justice making out a commitment to a Constable or other officer requiring that the prisoner be committed to jail in default of bond.

Under Section 8347, a bond of the latter character must be approved by the Justice of the Peace trying the case or by the sheriff, as the case may be. Section 8347 also covers cases in counties, which have no Criminal Court, which are triable on their merits in Justice of the Peace or County Judge's Court.

In *West vs. State*, 75 Florida 379, the Supreme Court held that provision of the Statutes for taking and approving bail bonds are merely directory and that as a matter of law, a bail bond which has never been approved at all, or has been approved by the wrong officer, would be a good bond.

It is upon the foregoing citation that I base my opinion to the effect that a Constable may take and approve a bail bond when he arrests a prisoner and such prisoner desires to give bail, because in the *Hatcher* case above referred to, the right of the prisoner to give bail when he is arrested for bailable offense rises above the right of any particular officer to approve such bond.

Please do not understand me to say or to hold that a Constable can approve that class of bonds referred to in Section 8347, which are bonds the prisoner is required to give after he has had a preliminary hearing and has been bound over to a proper Court for trial. The reason for this rule is obvious. After a preliminary hearing commitment is issued for the prisoner requiring him to be confined in the county jail until he gives bond. The prisoner from that time on is presumed to be in the custody of the sheriff, therefore, the law requires that either the sheriff or the judge must approve a bail bond of that kind.

A Constable, as I have stated above, does have the right to take and approve a bail bond under certain conditions, but his authority in that respect is limited to taking and approving a bail bond given by a prisoner, which he arrests on a warrant served by himself, and such bond, when given, only extends until the Justice of the Peace has held a preliminary hearing in the matter. After a preliminary hearing, if the accused is bound over, he must give a further bond and this latter bond is the one which only the sheriff, County Judge or Justice of the Peace has the right to approve.

Trusting I have made the matter clear to you, I have the honor to be,

Yours very truly,

FRED H. DAVIS, Attorney General.

PROSECUTING ATTORNEY

LICENSES—TAX ON SHOOTING GALLERIES.

February 10, 1930.

Dear Sir:

Under Section 1257, Compiled General Laws, owners or managers of shooting galleries are required to pay a license tax of \$10.00 "for each place of business." In view of the fact that the license is required for

each place of business, I think this requirement takes the matter out from under the provision of Section 1054, which provides for only one State license to be collected "unless otherwise provided." The requirement that a separate license be taken out for each place of business has been construed for a number of years to mean that a State license is collectible on each place of business notwithstanding Section 1054, Compiled General Laws, on the theory that by requiring license for each place of business it is thereby "otherwise provided" by the Legislature within the meaning of Section 1054.

Trusting this answers your letter of February 1st, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

FOREIGN FERTILIZER COMPANIES—LICENSE TAX ON AGENTS
MAINTAINING OFFICES IN STATE.

February 15, 1930.

Dear Sir:

The license tax provided by Section 1055, Compiled General Laws, on agents for foreign fertilizer companies applies to all persons maintaining an office or place of business in this State for the taking of orders or selling of fertilizers not manufactured in Florida. However, I do not think that this license can be applied to any agent, who is merely carrying out a transaction in interstate commerce, but applies to agents who act in any other transactions involving the disposition of all foreign fertilizers. The question of whether a particular agent confines his business entirely to taking orders which are a part of interstate commerce, of course, depends upon the facts in the particular case.

Trusting this answers your letter of February 10th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF

SHERIFF—CUSTODY OF INTOXICATING LIQUOR.

January 30, 1929.

Dear Sir:

The purpose of Section 7625, Compiled Laws, 1927, Chapter 10217, Acts 1927, was to transfer the custody of liquors and other apparatus used in the violation of the prohibition laws from the sheriff to the Clerk of the Circuit Court.

This matter was debated at great length in the Legislature and the legislative intent to have the Clerk act as custodian of seized liquors was clearly expressed in the Act and clearly exists.

I seriously doubt as to whether or not the Supreme Court would recognize the admission of evidence of liquors seized by an officer and not handled as prescribed by Section 7625.

Trusting this answers your inquiry of January 25th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF—EX OFFICIO TIMBER AGENT—COMPENSATION
ALLOWED.

June 8, 1929.

Dear Sir:

Section 2860, Compiled General Laws of 1927 provides that Sheriffs of each county in this State shall ex officio act as Timber Agent of his county, and he shall receive as pay for his services one-fourth of the net proceeds arising from all seizures, and of all net amounts recovered from trespassers reported by him upon the lands of the State or of any fund of the State.

Section 2861 makes it the duty of the Sheriff as Timber Agent to inquire diligently into all cases of trespass upon the public lands that may come to his knowledge and to make complaint thereof before the Court or any officer having jurisdiction that the parties offending may be arrested and dealt with according to law. This Section also authorizes and empowers the Sheriff as Timber Agent to seize all timber that shall have been cut upon the public lands of the State or removed therefrom and to sell the same at such place within the District as he may deem most convenient.

Section 2862 and 2863 provide other proceedings in reference to timber cut in violation of the laws of the State of Florida.

Section 7393 makes it a criminal offense for any Sheriff or his Deputies to combine with any person trespassing upon the State lands or engaged in getting logs or other timber therefrom, and makes such offense punishable by imprisonment in the State Prison not exceeding three years, or by fine not exceeding \$1,000.00. Section 7392 provides for imprisonment in the County Jail not exceeding twelve months of persons who trespass upon any timber lands of the State.

Section 7398 provides punishment by a fine of not more than \$1,000.00 and imprisonment not exceeding one year or both for trespassing upon lands against which there are unredeemed and outstanding tax certificates held by the State.

Section 7399 makes it unlawful for the owner of any timber or timber lands to take or use any timber after six months from the time same has been sold for the non-payment of taxes.

You will observe that under the terms of the foregoing statutes you are authorized to levy upon all timber which may be cut upon said land in violation of the State law, and to retain for your services one-fourth of the net proceeds arising from the sale of timber cut on State lands in violation of the law, as well as arrest the offenders.

State authorities are in receipt of numerous complaints throughout the State concerning the illegal cutting of timber belonging to the State and upon lands sold for taxes, and the attention of the several Sheriffs of the State is being invited to the provisions of Section 2860, which makes the Sheriff of each county ex officio timber agent and allows him certain fees for his services in connection therewith.

Trusting this matter will have your attention, I have the honor to be,

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—RIGHT TO CONFISCATE FIRE ARMS FOUND IN RESIDENCE IN COURSE OF SEARCH, NO AUTHORITY.

January 21, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 16th on the above subject.

Inasmuch as the laws of Florida do not make it a crime to have possession of fire arms in one's residence, I am of the opinion that there is no authority for officers to seize or confiscate the same when found pursuant to a search of the premises under a search warrant issued to carry out a search for liquor. The right to confiscate fire arms or any other kind of property must be based upon some law authorizing the same. The only law on this subject at present in Florida is that providing for the confiscation of weapons found concealed upon the person. See Section 8326, Compiled General Laws. Also Section 7205, Compiled General Laws.

You will understand that under Section 7204 an officer is authorized to confiscate weapons found upon a person who is arrested while committing a criminal offense or disturbing the peace.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—RIGHT TO GIVE COST BOND AFTER SERVING PART OF SENTENCE.

February 15, 1930.

Dear Sir:

Section 8426, Compiled General Laws, provides that the defendant may give a fine and costs bond "upon being taken into custody by the proper officer of the Court or prior to such arrest". I think this means that the defendant can make his bond at any time either while serving his sentence or before he begins to serve.

Trusting this answers your letter of February 14th, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—PAYMENT OF REWARDS

January 26, 1930.

Dear Sir:

Your letter of February 20th on the above subject has been called to my attention.

The sheriff is entitled to a fee for arresting a prisoner, and if he desires to pay a member of the Jacksonville police Department the fee which would ordinarily go to him for making an arrest, I see no legal objection which will prohibit him from doing so.

I do not believe, however, that the sheriff would have the right to claim an arresting fee of \$2.00 for himself, and pay a separate arresting fee of \$2.00 to a member of the police department for making the same arrest.

With regard to rewards, I am of the opinion that a sheriff has the legal right to offer a reward payable from the earnings of his office for the capture of criminals or otherwise, in connection with his official duties. It is a well known fact that officers frequently are compelled to offer rewards in order to secure the cooperation of other officials throughout the country in apprehending prisoners in special cases. The offering and payment of such rewards is in my opinion as much a proper expense of the operation of a sheriff's office as any other.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

**SHERIFF—AUTHORITY OF COUNTY COMMISSIONERS TO EMPLOY
PRISONERS CONFINED IN COUNTY JAIL TO WORK
ON COUNTY ROAD.**

February 27, 1930.

Dear Sir:

At the request of Governor Carlton, I am answering your letter of February 19th.

Section 8549, Compiled General Laws, expressly authorizes the Board County Commissioners to employ all persons in the jail in their respective counties under sentence of conviction of crime by putting such convicts at labor upon the roads, bridges or other public work of the county where the prisoners are confined. These county convicts are required to be kept at work under rules and regulations prescribed by the Commissioner of Agriculture. The Board of County Commissioners is required to observe these rules and regulations and also to provide or cause to be provided food, clothes, etc. There is no objection to using the jail as a stockade.

As to using the superintendent of roads as the captain, you should communicate with the Commissioner of Agriculture for information on this subject.

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—LAW RELATING TO SLOT MACHINES.

March 17, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 13th, requesting my opinion as to whether or not a certain slot machine known as "base-ball mint vending machine" would constitute a violation of the State statute relating to gambling.

I have seen the machine and read the description of its operation as stated in your letter of March 13th. It seems that the machine is so constructed that any person depositing a nickel in the same will receive a five-cent package of candy mints. He also has a chance to receive in addition to the candy mints one or more brass tokens on which are stamped "loaned for amusement only" on one side, and on the other side the words "property of Mills Base-ball Vender." Such tokens received from the machine have no value, are not redeemable in money

or merchandise, but may be used only to re-play the machine for the purpose of amusement in connection with the operation of the same, which involves the playing of a baseball game. No mints are given out when tokens are used and the machine is so constructed that when the mints are entirely exhausted from the machine it will automatically lock itself so that it cannot be replayed again until refilled. In other respects, the machine is an amusement device by which a person can play a game of baseball through the use of either nickels or tokens to operate the same.

You will understand that there is no law in Florida prohibiting the operation of slot machines merely because they are slot machines. It is only when they are gambling devices that they are unlawful. Slot machines per se are not unlawful. I am of the opinion that a machine operated as above stated is not a gambling device and is therefore not against the law to either operate or have in possession. At the same time, I deem it advisable to state that even the most innocent kind of machines may be used by the player as a means of gambling, and of course if gambling is usually carried on by the use of the machine the persons will be subject to arrest and conviction, even though the machine itself is not a gambling device.

As for example, if the store keeper should offer to redeem the tokens given out by the machine in either money or merchandise or the players who operate the machine should place bets on the outcome of the baseball game which is played by it. In such last mentioned case, the persons who did the gambling would be subject to arrest and conviction, but the machine itself would not necessarily be considered a gambling device so long as it remains so designed as not to be primarily adapted to that use.

You will of course understand that a person can gamble on everything from the birth of a baby to the burial of a corpse. And while the birth of a baby and the burial of a corpse may in themselves be perfectly legitimate, persons who gamble on the same might still lay themselves liable to the law.

For your information, I enclose another opinion rendered by me concerning a similar machine.

Yours very truly,

FRED H. DAVIS, Attorney General.

**SHERIFF—AUTHORITY TO EXECUTE SENTENCE FOR COLLECTION
OF FINES.**

March 27, 1930.

Dear Sir:

This is in answer to your letter of March 22nd, on the above subject.

The method of enforcing collection of a fine imposed against a person convicted of crime is prescribed by Section 8425, Compiled General Laws. The Judge can issue a *capias* against the body of the person sentenced to pay the fine and this *capias* may be levied by the sheriff upon any property belonging to the prisoner either real or personal not exempt from levy under execution. I am also of the opinion that you may proceed against the bondsmen in such cases, as the bondsmen

are not released until the body of the convicted person is turned over to the sheriff. If a defendant waives his presence in Court and has someone enter his plea of guilty for him, he does not comply with the terms of his bond unless he either surrenders himself to the sheriff or pays the fine.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—RIGHT OF CONVICT GUARD TO SHOOT ESCAPING
CONVICT

April 30, 1930.

Dear Sir:

This will acknowledge receipt of your letter of April 24th requesting information on the above subject.

Section 7135, Compiled General Laws, provides that homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either in obedience of any judgment of a competent court, or when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty, or when necessarily committed in retaking felons who may have been rescued or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

It necessarily follows from the foregoing that insofar as convicts convicted of felony are concerned that a convict guard has the right under the above quoted Section of the law to shoot and if necessary kill an escaping convict to prevent his escape or to effect his recapture. In the case of a convict held in prison on a misdemeanor charge only, that is, when committed from a justice of the peace or county judge's court, a convict guard is not authorized to shoot and kill a fleeing convict, unless such fleeing convict has committed a felony in making his escape or unless he is attempting to do violence which would amount to a felony against the officer or some one of them having him in charge.

If a misdemeanor convict merely attempts to run away without resisting by violence any officer attempting to stop him, or without effecting his escape through the means of tools or instruments conveyed to him in violation of Section 7537, there is no authority of law for a convict guard to shoot and kill such prisoner merely to prevent his escape or to accomplish his recapture.

At the same time, it must be borne in mind that very few escapes by convicts are committed by such convicts without the commission of a felony to which they are either a principal or accessory. And therefore in most instances it may be said that a fleeing convict is a fleeing felon, and as such a convict guard has the right to shoot and if necessary to kill such convict to prevent his escape.

For example, Section 7538 makes it a felony for any person to aid the prisoner to escape. A prisoner who makes arrangements to secure aid to escape would be accessory before the fact under Section 7538, to the felony which would be committed by the person who furnished the aid. Consequently, he himself would be a felon.

Likewise, under Section 7537 a person conveying tools or instruments into the jail to enable a prisoner to escape is guilty of a felony, and a prisoner who procures such to be done is guilty of accessory before the fact thereto and is himself guilty of a felony. Therefore, if he escapes he would be considered an escaping felon and subject to be shot.

Likewise, in the case of a convict who resisted, obstructed or opposed an officer in the execution of his duties by offering or doing violence to his person, would be committing a felony under Section 7524, and if he fled he would be subject to being shot as a fleeing felon by merely running away without any other circumstance or fact connected with it. But a misdemeanor convict does not warrant a convict guard in shooting and killing such misdemeanor prisoner under the present laws of this State.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—COMPENSATION COUNTY OFFICIALS—MANNER AND
TIME OF PAYMENT.

June 10, 1930.

Dear Sir:

Section 1 of Chapter 11954, Acts of 1927, together with other Sections of the same Act, refers to the *yearly* compensation which shall accrue to a County official under the law. Chapter 14502 requires reports to be made at the expiration of each semi-annual period, viz: June 30th, and December 31st of each year, but this does not change the provisions of Chapter 11954, Acts of 1927, providing for compensation on a *yearly* basis. I am, therefore, of the opinion that there is no duty on the part of county officers to make payments to the County Commissioners of any funds falling under the provisions of Section 4 of Chapter 11954, Acts of 1927, except at the end of each *yearly* period, which is December 31st of each year. It also appears to me that the compensation to be retained by the officer and the surplus to be paid over to the County Commissioners under Section 4 of Chapter 11954, Acts of 1927 must be computed on a *yearly* basis and paid upon that basis, notwithstanding the fact that Chapter 14502 provides for semi-annual reports, it being evident that the semi-annual reports are for information only.

Trusting this answers your letter of May 26th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—INQUEST HELD BY JUSTICE OF PEACE.

June 26, 1930.

Dear Sir:

Answering your recent inquiry on the above subject I beg to advise that Section 8519, Compiled General Laws, provides that justices of the peace "within their respective districts" shall hold inquests of the dead and to that extent shall be deemed coroners.

This Section also provides that if for any reason the justice of the

peace of the district is unable to hold an inquest that the inquest shall be held by the county judge or by a justice of one of the adjoining districts. The justice of the peace has no authority to hold an inquest of the dead outside of his own district except under the circumstances outlined in the statute, namely, where the justice of the district in which the death occurs shall be for any reason unable to hold the inquest.

Trusting this is the information you want, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SUPERINTENDENT OF PUBLIC INSTRUCTION

EXPENDITURES OF SPECIAL TAX SCHOOL DISTRICT FUNDS AUTHORIZED BY TRUSTEES—APPROVED BY BOARD OF PUBLIC INSTRUCTION.

October 4, 1929.

Dear Sir:

I regret that other pressing matters have prevented my giving you a reply to your letter of September 25th at an earlier date.

In the case of *Pennock vs. State*, 54 Southern 1004, the Supreme Court held that the trustees of the Special Tax School District had no authority to create any debt payable out of the Special Tax School District funds without the approval of the Board of Public Instruction of the County. Therefore, the School Board has the right to decline to pay a bill duly approved by the Trustees of a Special Tax School District, even though the bill is approved for payment solely out of Special Tax School District funds.

The law requires the approval of both the Trustees and the Board of Public Instruction for the expenditure of Special Tax School District funds.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SICK LEAVE WITH PAY TO TEACHERS EMPLOYED IN PUBLIC SCHOOLS.

October 15, 1929.

Dear Sir:

I have carefully read your letter of October 5th, with reference to Chapter 13881, Acts of 1929, with reference to granting sick leave with pay to teachers employed in the public schools of the State of Florida.

In the book which I have, Section 1 reads in part, as follows:

"That such teacher shall not receive pay for more than five days while absent from his or her duties on account of sickness or death during any one school year."

Construing this language in connection with the remainder of the Act, it appears that if five days leave of absence accumulates to the teacher's benefit each year until a limit of not less than twenty days is reached as provided in Section 3, which I interpret to mean that the

Board of Public Instruction is required to recognize this cumulative leave of absence from year to year for at least a period of twenty days or which they may recognize to a higher limit.

In other words, construing Section 3, which provides that the five days sick leave in Section 1, "shall be cumulative from year to year to a limit of not less than twenty days" it would appear that the limit is to be fixed by the School Board as to how many days shall be accumulated over a course of years, but in no instance is the Board to be allowed to fix a limit of less than twenty days for cumulative sick leave absence. Some Boards of Public Instruction will be inclined to stop with the twenty days as cumulative, while others will be inclined to allow the teacher to accumulate these five days over as many years as she is employed, thereby making the same much more than twenty days. While this may not be what the Legislature had in mind, it is what the Legislature said in Law and that is the way it will have to be interpreted. Unless the Board of Public Instruction restricts the limit of accumulated sick leave to twenty days in the aggregate, it is conceivable that it might run as high as three months over a course of years, thereby making this sick leave operate as a sort of teachers pension or sick insurance.

Section 4 of the Act is merely to make clear the fact that a teacher absent on account of personal injury incurred in the discharge of duty, etc., as provided in Section 3 of the Act shall be entitled to full pay for ten days while absent from duty notwithstanding the limitation of five days found under Section 1 of the Act by absence caused by sickness or illnesses contracted in line of duty in the school room. In other words, the teacher may receive five days full pay with leave of absence for ordinary sickness or death, but if the teacher receives personal injury or contracts an injury in line of duty in the school room this allowance is increased to ten days with full pay.

Trusting this interpretation of the Act will be helpful to you, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SOUP KITCHEN—MAINTENANCE OF AS EDUCATIONAL PURPOSE.

January 17, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 16th on the above subject.

Undoubtedly, the equipment and maintenance of a "hot soup kitchen" in connection with the operation of a public school is of doubtful classification as an educational purpose within the meaning of the school laws permitting expenditures of money for educational purposes only. At the same time, the practice is generally being carried on throughout the State of maintaining these "hot soup kitchens" as well as dispensing milk and other articles of food in connection with the operation of schools and in view of this long settled practice, I would hesitate to now promulgate a ruling to the effect that such practice is illegal. I think an expenditure for equipment for a school cafeteria might be legal under some circumstances where it is established that the maintenance of such cafeteria service promotes the better operation of the school, as for example, by preventing the children having to leave the grounds in order to obtain

lunch or something of that character, and as you are the judge of whether these circumstances exist in the particular school you mention, I will leave the question as applied to your local school to you.

Trusting this letter will be helpful to you, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

HIGH SCHOOLS—AUTHORITY—BOARD PUBLIC INSTRUCTION
OVER HIGH SCHOOL LOCATED SPECIAL TAX
SCHOOL DISTRICT.

March 21, 1930.

Dear Sir:

Under the Laws of Florida, the Board of Public Instruction of the County has final jurisdiction over all schools in the county, including those located within special tax school districts. In special tax school districts, however, the trustees perform the functions of school supervisors and have authority to nominate all teachers for schools in the district. The School Board does not have to accept these nominations, but the trustees have the right to make them in the first instance. The final appointments are made by the Board of Public Instruction and they alone have authority to make final appointments.

See Section 709-710, Compiled General Laws.

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL CONVENTION—AUTHORITY OF SCHOOL BOARD TO SEND
DELEGATES TO SCHOOL CONVENTION.

April 12, 1930.

Dear Sir:

Your letter of April 2nd on the above subject has been called to my attention since my return from Washington.

At the outset, you will understand that no money can be spent by a Board of Public Instruction nor by a Board of County Commissioners which is not properly provided for in a budget as provided by law. As to what expenses can be taken care of in a budget, it appears to me that if the Board of Public Instruction of the county deems it for the best interest of the educational system of the county to provide an item in the budget to defray expenses incurred by the County Superintendent and Board members in attending useful conferences of school board members and administrative officials, that they have the right to do so without violating any statute that I have been able to find.

This is a day and time when public officers must keep in contact with what other public officers are doing along the same lines, and in the same work, if they are to be progressive in executing their duties. I am therefore of the opinion that it is within the reasonable discretion of the School Board to provide for the payment of expenses of the county superintendent and Board members to these useful conferences, where they have properly provided for same in the county budget. It seems to me that such an expense within reasonable limitations is just as much for

the advancement of the educational interests of the county as any other expense in that it enables the Board members and Superintendents to keep abreast of the times.

The Legislature itself has indicated that this is a sound public policy, because it provides funds to enable the Judges of the Supreme Court to attend not only the Bar Association meetings held in Florida, but national Bar Association meetings held in other states. The theory of such policy is that by attending such conventions the welfare of the judicial system is promoted by enabling the judges to keep up with everything that is going on in connection with their work.

The same is true of other departments of the State government, and I see no reason why it would not apply to a part of the county governments.

Yours very truly,

FRED H. DAVIS, Attorney General.

HEALTH EXAMINATION—AUTHORITY OF SCHOOL BOARD TO PAY
PHYSICIAN FOR SERVICES.

April 29, 1930.

Dear Sir:

This will acknowledge receipt of your letter of April 22nd., on the above subject.

Under repeated rulings of the Supreme Court the school funds should not be used for any purpose except for the support and maintenance of the public free schools. I would not go so far as to say that it would be illegal for the School Board to make provision in its budget for paying a reasonable amount to a physician to determine the condition of health of pupils attending the schools, especially when there was threat of an epidemic of contagious disease. At the same time, such a provision would be an unusual one in a school budget in view of the fact that there is a separate health department existing in the State which furnishes services of this character, as well as a separate health department in each city, which usually looks after the health of all the people, including school children. If as a matter of fact the Board of Public Instruction of your county actually employed a medical officer to make an examination of the school children of the county to determine whether or not they had dyptheria, and they have actually agreed to pay such health officer for making such examination, my advice would be that this bill for that service be paid. The matter might be considered as an emergency in view of the nature of the disease involved such as would warrant the School Board in paying the physician under the circumstances, but as a general policy, it appears to me that only extraordinary circumstances warrant the School Board in expending the school funds on matters of health, which are matters properly falling within the jurisdiction of the county and state health departments.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

GASOLINE TAX—AUTHORITY BOARD PUBLIC INSTRUCTION TO
USE STATE AND GASOLINE TAX MONEY TO ASSIST
INDEBTEDNESS IN SPECIAL TAX SCHOOL DISTRICT

June 10, 1930.

Dear Sir:

In my opinion it is not legal for the board of public instruction of Hendry county to use the gasoline tax money received by the county for the support and maintenance of public free schools therein to supplement and make up for a deficit in the tax levy made to support bonds issued and outstanding in a special tax school district.

The Constitution specifically provides that whatever aid is given by the State from gasoline taxes or otherwise is given for the support and maintenance of public free schools only. The Supreme Court has specifically held that such moneys as are provided to be used for the support and maintenance of public free schools cannot be used to retire outstanding bonded debts.

The Constitution contemplates that bonds issued by a special tax school district shall be supported and paid for by a levy on the property in the district and this levy is not limited to five mills under the present constitutional provision, although it was limited to five mills prior to the adoption of the present constitutional provision on the subject.

Trusting this answers your letter of May 26th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL FUNDS—INTEREST PAYMENTS ON DEPOSIT OF.

June 16, 1930.

Dear Sir:

This will acknowledge receipt of your letter of June 12th regarding the above subject.

Section 2405, Compiled General Laws, which is a current law on the subject provides that any bank which desires to become a county depository which includes the depository for school funds as well as other funds, shall file with the Board of county commissioners or board of public instruction or both boards a written offer and guarantee to pay said board or boards two per cent per annum on all daily balances when the funds on deposit with them shall exceed \$2000, and four per cent per annum on time deposits, and shall execute and deliver to the boards proper security for the moneys deposited to insure the safe keeping and accounting therefor.

The statute contains a proviso to the effect that the county commissioners and school boards shall divide the deposits of their counties equitably among the banks of the county that have qualified as provided by law; And in case no bank in the county shall qualify that then the said boards are authorized and *commanded* to divide the deposits among the banks meeting the conditions as provided in this Chapter.

In some of the counties of the State as in your county, the banks

owing to financial conditions have found it impossible for them to agree to pay the required four per cent on time deposits. As a result the county commissioners and boards of public instruction in such counties are unable to comply with the provisions of the above quoted Section of the law, without attempting to go into other counties to seek places for the deposit of county moneys which will meet the requirements of the statute.

This brings up the question as to what shall be done when no bank in the county will pay the required four per cent on time deposits and whether or not the board is authorized to agree to pay less than the required four per cent for time deposits without seeking to obtain the four per cent interest from some other bank outside of the county as contemplated in the proviso of the above Section of the law.

In my opinion the board of county commissioners and the board of public instruction of a county has sufficiently complied with the law when it endeavors to secure the required four per cent interest on time deposits, and having failed to secure any offers to pay such four per cent, thereupon proceeds to designate a depository in the county under an agreement by which the board agrees to accept less than the statutory four per cent.

Where a board of public instruction or a board of county commissioners fails to receive any offer from the banks of their own county to pay the statutory four per cent, I find nothing in the statute which requires them to seek from banks in the other sixty-seven counties which will agree to pay the four per cent, before they proceed to designate their own banks as depositories on a basis less than four per cent.

I think the statute contemplates that in the absence of some affirmative bid actually presented to the board from some qualified bank outside of the county agreeing to pay the four per cent fixed by law, the county commissioners or the school board can then proceed to designate depositories within their own county upon such basis as they can obtain approaching as near as possible the required four per cent on time deposits.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

GENERAL COUNTY SCHOOL FUND—DISTRIBUTION OF
PROCEEDS OF.

June 17, 1930.

Dear Sir:

This is in answer to your letter of June 13th. on the above subject.

The only limitation placed by law on the apportionment of the General County School Fund, is that the County School Board shall apportion the same on some *equitable* basis. The whole spirit of our school law is to equalize educational opportunities, regardless of districts or county lines. It will be entirely proper for the County School Board in distributing the County School Fund to take into consideration the respective abilities of the special tax school districts in the county to

provide educational opportunities and to make an apportionment accordingly. Of course the mere fact that a particular community has incorporated itself into a special tax school district and levied a special tax for its own benefit does not mean that the School Board should discriminate against such district merely because its financial ability to more or less provide for itself on its own resources. At the same time, there is nothing to prevent the School Board which is the recipient of a greater sum of State money as well as the ordinary tax levy of the county to give a higher degree of assistance to a poorer district than it does to a rich one in order to give the school children their proper educational opportunities.

Trusting this answers your letter of June 13th., I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICT BONDS—NECESSITY OF ADVERTISING FOR BIDS WHEN PURCHASED BY BOARD AS MEANS OF INVESTMENT OF SINKING FUND.

June 24, 1930.

Dear Sir:

This is in answer to your letter of June 18th regarding the above subject.

While Section 727, Compiled General Laws, requires that the county board of public instruction shall advertise for bids before selling any special tax school district bonds authorized to be issued under the act, yet where such bonds are purchased at par by the county board of public instruction for investment under Section 736, Compiled General Laws, it appears to me that the statutes do not contemplate that any notice of advertisement for bids is required under such circumstances.

My construction is that the notice of publication for bids for the sale of special tax school district bonds is only required where the bonds are to be offered for sale to the public or are to be sold below their par value.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL AGE FOR ATTENDANCE BY CHILDREN.

September 13, 1930.

Dear Sir:

This will answer your letter of September 11th on the above subject.

Under Section 493, Compiled General Laws, the school system is maintained for all children between the ages of six and twenty-one years, so far as the funds will admit. Ordinarily, a child who has not reached the age of six years has no legal right to insist upon being admitted to the public free schools, although he does have such legal right after he reaches such age. Where a child is not six years old at the time the term of school begins, but will attain the age of six years before the term ends, the question of whether or not such child shall

be admitted to begin the school term or shall be admitted to enter during the school term, is entirely one within the control of the County Board of Public Instruction, which has power to permit the child to enter at the beginning of the school term, because he will reach the age of six years before the term ends, or to admit him during the school term after he reaches the age of six years, or to exclude him from entering at all until the first term of school begins after he reaches the age of six years.

I think The Board is within its power to refuse to permit pupils to enter at the beginning of a school term, who are not six years old, but at the same time, the Board is also vested with power to permit such pupils to enter, even though they are under six years old, if they will be six years old before the term ends. This is a discretionary matter confided to the School Board to be exercised by them according to their best judgment for the interest of the school.

There is no law to compel the School Board to admit a child during the middle of the term, merely because it has reached the age of six years during such term, unless the School Board in its discretion decides to grant such permission.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SUPT. PUBLIC INSTRUCTION—RIGHT OF BOARD TO MAKE
IMPROVEMENTS IN SCHOOL PROPERTIES WITHOUT
ADVERTISING FOR BIDS.

September 15, 1930.

Dear Sir:

Under Section 732, Compiled General Laws, where bonds have been issued by special tax school districts for the purpose of acquiring, enlarging, furnishing or otherwise improving school buildings, the county board of public instruction "upon the recommendation of the trustees of such special tax school district" shall prepare specifications and advertise for bids.

Section 734 provides that the board of public instruction shall in all other cases have the authority to disburse the proceeds derived from the sale of bonds in such manner as may be necessary and proper to carry out the purposes and object for which the said bond issue was authorized.

Under these sections of the law, it appears to be necessary to advertise for bids only when recommended by the trustees of the special tax school district whose money is to be spent. In cases of ordinary expenditures by the Board of Public Instruction, there is no law requiring such board of public instruction to advertise for bids, as is the case with county commissioners. County commissioners cannot spend anything \$300 without advertising for bids, but the board of public instruction can spend unlimited amounts without advertising for bids.

While I was a member of the Legislature, I succeeded in having passed by the House of Representatives at three different sessions, a bill

putting the county school board under the same restriction with reference to advertisement for bids as applies to county commissioners, but in neither instance was the bill passed by the Senate; consequently the law is that advertising for bids by the board of public instruction is not required.

Of course, if the board of public instruction uses its power to let contracts without advertising for bids, injunction proceedings by a tax payer might lie against the board to restrain any such abuses, and in the event that an excess amount of money is spent by the board, a suit in equity could probably be maintained by tax payers against the members of the board individually to compel them to pay back the money which was spent in excess of the necessities of the case.

See *Neacy vs. Drew*, 187 N. W. 218. *Burns vs. Essling*, 203 N. W. 605. *Richter vs. Savannah*, 127 S. E. 739. *Lainhart vs. Burr*, 38 So 711. *Robert G. Lassister and Company vs. Taylor*, 128 So 14.

Trusting this answers your communication, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SUPT. PUBLIC INSTRUCTION—AUTHORITY OF BOARD TO PUT
INTO OPERATION GROUP INSURANCE OF EMPLOYEES.

October 24, 1930.

Dear Sir:

This is in answer to your letter of October 22nd in which you request my opinion as to whether the school laws would permit or justify the county school board to pay for insurance for its employees and from what fund.

I have previously had occasion to pass on this same question in another connection.

There is no authority for the county commissioners or the school board to put into operation group insurance on county employees *as such*. However, both the school board and the board of county commissioners of the county have the right to contract for the employment of their employees. The right to contract includes the right to fix the compensation of those who are employed. In passing on the matter with reference to the authority of county commissioners and city governments in this connection, I have expressed the opinion that I see no legal objection to the plan of group insurance for employees, provided the matter was handled as a part of the compensation of the persons employed.

For example, in the case of the school board—the power of the school board would extend to the making of a contract and the fixing of compensation of school teachers and other employees. The power to fix compensation would authorize the board to pay as a part of such compensation certain insurance premiums necessary to carry on a system of group insurance. But in doing so the school board would only be executing contracts of employment, and the payment of the premiums

would merely be a part of the compensation of the employees, and would be paid out of the same fund as that from which the salaries of the employees are now being paid.

In some instances the insurance is compulsory, the employees being compelled to agree as a part of their contract of employment, that a certain amount of their salaries shall be withheld to pay premiums on industrial insurance carried for their benefit.

But the only way the matter can be handled is in connection with the fixing of the compensation of the employees of the Board, and as a part of the contract of employment.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL TRUSTEES—RIGHT TO BORROW MONEY.

December 19, 1930.

Dear Sir:

This is in answer to your letter of December 13th on the above subject.

I think it is clear from the court decisions and laws of the State of Florida that the trustees of special tax school districts, even though they are created as a body corporate, have no authority to borrow money. I do not think such power could be given by express legislative act, because the Constitution provides that a special tax school district may issue bonds, and provides the method by which such bonds shall be retired when issued and the conditions under which they shall be issued.

The rule *expressio unius exclusio alterius* prohibits the creation of a debt in any other form or by any other means. The recent opinion of the Supreme Court in the Lafayette County case, 130 So gives some pertinent rules of law which may be applicable to a situation like this, although that case deals only with the power of the board of public instruction.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SUPERVISOR OF REGISTRATION

REPEAL OF LAW PERMITTING VOTER TO REGISTER BEFORE TAX COLLECTOR.

December 4, 1929.

Dear Sir:

Section 313, Revised General Statutes, which is Section 370, Compiled General Laws, authorizes the registration of voters before the tax collector when paying their poll taxes, but this section has been repealed by Section 6 of Chapter 13761, Acts of 1929 and it is now unlawful for the tax collector to register voters.

Yours very truly,

FRED H. DAVIS, Attorney General.

January 11, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 8th on the above subject.

If you will notice by reading Chapter 7950, Acts of 1919, as the same appears at page 334 of the Session laws of 1919, the provisions of the statute quoted in your letter permitting soldiers, sailors and marines to vote without payment of poll taxes are limited to municipal elections in the first instance, and also by the title of the Act are limited to those soldiers, sailors or marines who were engaged in the World War, and for whose benefit the Act was passed.

In other words, Section 249 is now obsolete and without force, so far as our state and county general or primary elections are concerned.

Yours very truly,

FRED H. DAVIS, Attorney General.

FREEHOLDER—DEFINITION OF.

April 1, 1930.

Dear Sir:

Your letter of March 28th on the above subject has been called to my attention.

The Courts have defined a free holder as one who owns land in fee or for life or for some indeterminate period. The estate may be equitable or legal. See 75 N. C. 13.

The dower right of a woman has been defined as the provision which the law makes for a widow out of the lands or tenements of her husband for her support and the nurture of her children. 2 Blackstone Com. 130.

Under the law a widow has the right to claim either a child's part or her dower in lands, after her husband's death. Consequently, whatever legal right she has in the land is of an inchoate nature only, and does not become fixed until her husband's death. If she dies before her husband, the right is lost, while a divorce from her husband completely wipes it out.

The Supreme Court of Florida has defined a freeholder as one who has an *immediate* beneficial ownership interest, legal or equitable, in the title to a fee simple estate in land, which means that a woman's dower right does not make her a free holder under the laws of Florida, nor entitle her to vote as such. See *Dean vs. State*, 74 Fla. 277, 77 So. 107. I think that the Statute should be amended so as to provide that a woman's dower right in her husband's property will entitle her to vote at elections in which only free holders may participate. But at the same time, this cannot be permitted under the present laws, as the same has been construed by the Supreme Court. Only an actual *immediate* beneficial ownership of land or some interest therein by the married woman will entitle her to vote as a free holder. My suggestion would be that

those women who desire to vote procure a deed of some kind from their husbands, so as to comply with the above rule.

Yours very truly,

FRED H. DAVIS, Attorney General.

REGISTRATION OF VOTERS—PAYMENT OF EXPENSE
NECESSARY FOR.

May 6, 1930.

Dear Sir:

I regret that your letter of April 30th did not reach my office until after I left the city for a week's absence.

It seems to me beyond question that Section 362, Compiled General Laws, authorizes the payment of any and all necessary help which is required by the Supervisor of Registration to properly register the voters and conduct the election. Of course, the Commissioners have an absolute discretion as to how much help they will allow and pay for. This is the practice thruout the State so far as I am advised.

The same thing will be true after the books are closed. It is of absolute importance that the registration be properly, fairly and accurately carried out and expense should be a second consideration toward having this accomplished. The statute refers to "all expenses necessarily incurred in the preparation for" the primary election. It seems clear to me that registration of voters is a "preparation for" an election.

Yours very truly,

FRED H. DAVIS, Attorney General.

IDENTIFICATION OF VOTERS AT POLLING PLACE—CHALLENGE

May 7, 1930.

Dear Sir:

Replying to your letter of May 6th asking for information as to the law governing the above subject, I beg to advise that inspectors at primary elections have the right to require the identification of any person proposing to vote at such primary election. That is, inspectors have the right to insist that any person who offers to vote demonstrate to them that such person is in fact a duly registered and qualified voter under the primary election laws.

The method of challenging voters is laid out by Section 404. This Section applies to challenges made by the inspectors themselves, as well as to challenges made by by-standers who are electors. This Section requires that in the event the voter is challenged "it shall then be the duty of the inspector and clerk of the election carefully to compare the information which he has written in the affidavit with the information entered in the registration book opposite the name of the person whom the challenged person represents himself to be, and upon such comparison and upon comparison of the *signature* in the registration book and on the affidavit and upon the taking of any other evidence which may then be offered, it shall be the duty of the inspectors of election to decide by a majority vote whether the challenged person shall be permitted to vote; provided that if the challenged person be unable to write or

sign his name the inspectors shall then ascertain by examination of the precinct register whether the person registered under the name of such person is represented thereby to have signed his name. If he is so represented such person shall be denied permission to vote without further examination; but if not then one of the inspectors shall place such person under oath and orally examine him upon the subject matter contained in the affidavit prescribed by this Section. If there is any doubt in the mind of any inspector as to the identity of such person the inspector shall also compare the appearance of such person with the description entered upon the precinct register opposite the name of the elector whom such person represents himself to be. Said inspector shall then proceed as in other cases to determine whether the challenged person shall be permitted to vote."

I have quoted the law at length as it is written in the law books. The authority of the inspectors in such matters appears to be very full and complete. It is not necessary for the inspectors to require the elector to make and sign the affidavit prescribed in Section 404, insofar as the inspectors themselves merely seek an identification of the voter.

Of course, if a challenge is interposed by anyone else except the inspectors the inspectors must require the challenged person to fill out the affidavit prescribed by law and then proceed as mentioned in Section 404. But when the inspectors themselves merely wish to satisfy themselves as to the identity of a voter they may do so by simply requiring the signature of the voter for comparison with the signature of the voter which was obtained at the time of his registration.

I have no objection to granting your request for permission to publish this letter if you deem it advisable.

Yours very truly,

FRED H. DAVIS, Attorney General.

POLL TAXES—EXEMPTION OF DISABLED WORLD WAR VETERANS FROM.

May 26, 1930.

Dear Sir:

This is in answer to your letter of May 25th.

Every World war veteran or Spanish American War veteran who has become disabled in the army or navy service is exempt from the payment of poll taxes. It is not necessary that such veteran shall have lost a limb in order to claim the exemption. He is entitled to the exemption for any disability which was actually incurred in the war, which disability is of a material degree. Of course, the mere fact that a man served in the war and has since become disabled through some cause or another does not entitle him to the exemption. The disability which he claims must in some way be traceable back to the war as a direct and immediate cause of it.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
PRIMARY—REGULATION GOVERNING CONDUCT OF.

367

May 27, 1930

Dear Sir:

This is in answer to your letter of May 23rd, which came to my office while I was out of the City. I will answer your questions as follows:

1. A voter applying for a ballot must be given a ballot of the party in whose name he registered, and it will be against the law to give him a ballot of any other party, even though he is willing to take the oath that he belongs to a different party from that in which he is registered. The law presumes that a man belongs to the party in whose name he registers. The voter was required to sign the book in making his registration, and like any other paper that a man signs, it is binding on him and cannot be changed, except in the manner provided by law. If a person is registered as a Democrat on the books, he must vote a Democratic ticket or not at all, and likewise if he is a Republican. It is absolutely against the law for a person to be permitted to vote a ticket of a party contrary to that shown on the registration books as the party of the voter and if the Inspectors permit this to be done, on printed oath, or otherwise, it might result in throwing out the entire precinct. It must be borne in mind that a party Primary is the same as a party Convention and after a person has registered his membership in a particular party, he has no right to change it, unless he does so in the manner provided by law, which is sixty days before the Primary election.

I am enclosing herewith a circular letter which answers the second question asked in your letter.

Yours very truly,

FRED H. DAVIS, Attorney General.

PARTY AFFILIATION OF VOTERS

May 28, 1930.

Dear Sir:

This is in answer to your letter of May 27th on the above subject.

There does not appear to be any legal obstacle under the present laws to prevent a qualified elector from running in the general election as an Independent candidate against a Democratic nominee or against a Republican nominee as the case may be, after such elector has had his party affiliation and registration cancelled. The law prohibits any person who *participates* in a primary election from running against the nominee, but when the voter has *not participated* a different rule probably applies.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CONVICTED OF MURDER—VOTING BY PERSON WHO HAS BEEN

May 28, 1930.

Dear Sir:

This is in answer to your letter of May 26th on the above subject.

A person who has been convicted of murder is disqualified to vote

unless he has been given a full pardon restoring him to citizenship. At the same time, if he has been found guilty and sentenced for murder but this sentence has been superseded by order of the court pending a decision by the Supreme Court, there is nothing to keep the convicted person from voting, until after the Supreme Court rules on the matter. The effect of a supersedeas pending appeal to the Supreme Court is to set aside the conviction for the time being.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

PRIMARY BOOKS—CHANGING OF BETWEEN FIRST AND SECOND
PRIMARY.

June 2, 1930.

Dear Sir:

This will acknowledge receipt of your letter of May 30th on the above subject.

There is no authority for making any changes in the primary books between the two primaries, that is, between the first primary and the second primary. The books close for all purposes on May 1st preceding the first primary and cannot again be opened after that until the time for opening them for the next primary, unless the Legislature especially authorizes it.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CERTIFICATES OF ELECTION FOR MEMBERS OF EXECUTIVE
COMMITTEES.

June 17, 1930.

Dear Sir:

This is in answer to your letter of recent date on the above subject.

Section 3 of Chapter 13761, Acts of 1929, provides for the *election* of members of party executive committees in the primary election held by political parties under the primary law. Section 18 of the same Act provides that primary elections, except where otherwise provided, shall be held and conducted in accordance with the general election law. Section 345 of the Compiled General Laws, which is a part of the general election law, provides that the Supervisor of Registration shall give a certificate of election to any person *elected*. Since Committee members are elected in the primary, and since the primary law contains nothing which is inconsistent with the provisions of Section 345, it appears to me to be proper for the Supervisor of Registration to give to those Committee members who have been *elected* in the primary, either by default or otherwise, a certificate showing such election upon payment of the customary fees for same. This certificate can then be presented to the party to whom it is issued as evidence of his title as a Committee member.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—ASSISTANCE TO VOTERS IN MARKING BALLOTS.

June 18, 1930.

Dear Sir:

This will acknowledge receipt of your letter of June 17th on the above subjects.

1. Where a voter is given assistance in marking his ballot, at least two of the inspectors should be present to assist him. The Inspectors of elections are only authorized to act as a Board or body and, therefore, a majority at least of them should participate in action allowed to be performed by the inspectors. In assisting voters to mark their ballots, the inspectors are not allowed themselves to mark the ballot, except in the case of absolute necessity, such as physical inability of the voter to use his hands, or complete blindness. In other words, in case of partial disability which might entitle a voter to assistance, the voter should help himself as far as possible. The inspectors should inform the voter as to who the candidates are on the ticket and let the voter indicate the candidates of his choice to be marked. Section 332 of the Compiled General Laws, provides that the voter may have the assistance of the "inspectors." You will observe that the plural and not the singular is used in the statute. The statute also provides that the "inspectors" shall retire to a booth with the voter and assist him in the marking of his ballot. Section 333 requires that all other voters be excluded from hearing the transactions between the inspectors and elector before the ballot is marked. In other words, the law requires the Board of inspectors to assist voters who require assistance and no individual inspector has the right to give such assistance by himself.

2. *Stubs attached to each ballot.*

The two stubs are numbered to correspond with each other so that the ballot may be identified when returned by the voter. *Under no circumstances* should the ballot itself be numbered, as that would be a violation of the secrecy of the ballot and might invalidate the whole election. Section 403 of the Compiled General Laws provides that the inspector shall write upon the upper stub the number of the ballot as shown on the poll list, and shall also write on said upper stub the name of the voter to whom the ballot was delivered, and shall write *his own initials*, (meaning the inspector's initials) upon the lower stub, together with the number of the ballot. The voter takes with him into his voting booth the ballot with the lower stub properly numbered and with the inspector's initials thereon. After he has marked the ballot he brings it back and submits it to the inspector who determines by examining the stub whether or not the same ballot which was given to the voter is the one being returned by him. In presenting the ballot to the inspector, the voter must so fold it that only the stub is exposed. If the inspector finds that the ballot is an official ballot given out to the voter he detaches the second stub and the voter then himself must deposit his ballot in the ballot box. It is against the law for the inspector to put the ballot in the ballot box, even at the voter's own request that he do so.

The voter must do his own voting and deposit his own ballot in the ballot box.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SUPERVISOR OF REGISTRATION—ELIGIBILITY TO HOLD ANOTHER OFFICE AT SAME TIME. UNLAWFUL.

July 2, 1930.

Dear Sir:

Replying to your letter of the 1st instant relative to the eligibility of the party holding the office of supervisor of registration to hold another office, I beg to call your attention to the provision contained in the last sentence of Section 258 of the Compiled General Laws of Florida as follows:

"The Supervisor of registration shall not be eligible for any other office until six months after ceasing to be such supervisor."

The obvious purpose of this provision as heretofore considered by this office is that elections should be protected in accordance with the constitutional guarantee to prescribe rules and regulations governing the conduct and holding of elections in such manner as to protect both the candidate and the public from any possible imposition on the part of any supervisor of registration in the exercise of the duties of his office.

I am therefore of the opinion that the proviso to Section 258 is a bar to the right of the supervisor of registration to be either a candidate for, be appointed or elected to, or to hold any office until six months after ceasing to be such supervisor of registration.

Yours very truly,

H. E. CARTER, Assistant Attorney General.

TAX ASSESSOR

TAX EXEMPTIONS—AMERICAN LEGION—PROPERTY OF

April 3, 1929.

Dear Sir:

Section 898, Compiled Laws of 1927, provides that all property in this State "owned" and exclusively used by the American Legion shall be exempt from taxation, the word "owned" must be given its ordinary and usual meaning and cannot be extended to cover a piece of property which is merely leased by the American Legion for its use.

This point was raised in the Legislature when the bill was passed and the word "owned" was used advisedly and not intended to cover leased property.

Section 899, Acts of 1923, also uses the word "owned" when referring to the exemption allowed organizations of ex-service men.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX ASSESSOR — RIGHT OF COUNTY COMMISSIONERS TO
RECOVER FROM TAX ASSESSOR OVER-PAYMENTS
IN COMMISSIONS

October 18, 1929.

Dear Sir:

In answering your letter of October 18th, it is not my desire to take issue with any position to the contrary which may have been asserted by the County Attorney or by the county commissioners. What I say in this letter is merely given as a matter of information in response to your inquiry and in the earnest belief that I have correctly stated the law applicable to the situation; which belief may or may not be accepted by other officers interested.

In the Nolan case, the Supreme Court held that a tax assessor had no legal right under Section 1028, Compiled General Laws, to compel the county commissioners to pay him commissions for assessing special district taxes, including school taxes, but until the Supreme Court had rendered such opinion, it was the general belief in Florida that the tax assessor was entitled to such commissions, and indeed the Circuit Court of Duval County had so decided because it was the decision of the Circuit Court of Duval County on this question, which was revised by the Supreme Court.

Section 1031, Compiled General Laws, provides for the monthly payment pro tanto of the probable commissions which the tax assessor will earn for the current year, 1-5 of such commissions being reserved to cover possible deductions against the tax assessor for illegal assessments and double assessments, but for no other purpose.

All payments, which had been made to tax assessors on their commissions prior to the holding of the Supreme Court in the Nolan case, were made by the county commissioners voluntarily upon a claim of right by the tax assessor with full knowledge on the part of the county commissioners of all the facts.

In the case of Jefferson County vs. Hawkins, 23 Florida 223, the Supreme Court says that the Law in a case of this kind is, as follows:

"A voluntary payment of money paid upon a claim of right, with full knowledge of all the facts, cannot be recovered back merely because of party at the time of payment being ignorant of or mistook the Law as to its liability. The illegality of the demand paid constitutes of itself no ground for relief, but there must be in addition some compulsion or coercion attending its assertion, which controls the conduct of the party making the payment."

In the above cited case, the Supreme Court applied this very rule to the Board of County Commissioners of Jefferson County and held that such county commissioners could not recover the alleged over-payment in that case.

It, therefore, appears to me that the county commissioners may likewise be barred from recovering over-payment of commissions made

to tax assessors, if such over-payments have been made under the circumstances mentioned in the above stated rule.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAX ASSESSMENTS—BASIS OF COMPUTATION OF ASSESSMENTS
AND EXEMPTIONS ALLOWED TO WIDOWS, VETERANS
AND OTHERS**

January 16, 1930.

Dear Sir:

Theoretically, the tax exemption of \$500.00 to widows, veterans and others is supposed to be upon the basis of the assessed value as shown by the tax books. At the same time, the assessed value is theoretically supposed to be the actual value. This means that if the assessed value is less than the actual value, that it would be nothing but proper to have the exemption allowed to widows and veterans reduced in the same proportion that the actual value was reduced in order to arrive at the assessed value. I would suggest, however, the necessity of having the tax books affirmatively show in every instance that the exemption of \$500.00 has been allowed. This can be done by placing on the tax books the assessed value of the property as it will be after allowing \$500.00 exemption in the manner above stated, and then showing in parenthesis after the name of the taxpayer an entry as follows:

(\$500.00 exemption allowed on this item for widow exemption, veterans exemption, etc.)

The amount of the assessment shown on the tax books would then be the net assessed value remaining to be paid on after giving credit for the exemption.

Trusting this answers your letter, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAX ASSESSOR—ALLOWANCE OF EXPENSES FOR ATTENDING
ASSESSORS' CONVENTION**

February 11, 1930.

Dear Sir:

It appears to me that expenses incurred by a tax assessor in attending a State Convention of Tax Assessors for the purpose of discussing and working out their common problems is a proper charge against the income of the office, which can be reported and should be reported as expenses of the office in rendering a financial statement to the Board of County Commissioners and to the Comptroller.

Trusting this answers your letter of February 3rd, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

**PARENT-TEACHERS' ASSOCIATION—EXEMPTION OF PROPERTY
HELD BY FROM TAXATION**

April 11, 1930.

Dear Sir:

Under Paragraph 3, Section 897, Compiled General Laws, only such

educational property as is actually used for educational purposes is exempt from taxation. See *Rast vs. Hulvey*, 77 Fla. 74.

I am unable to find anything in the statute read in the light of the Supreme Court opinion above referred to, which will allow the exemption of property held by a parent-teachers' association. If such exemption is desired to be made, it will be up to the Legislature to pass a special bill to that effect, just as was done for the exemption of property of women's clubs, American Legion, fraternities, sororities, etc. See Section 898, Compiled General Laws.

Trusting this answers your letter of April 8th, and regretting that I have been unable to find anything which will be of help to you, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

EDUCATIONAL INSTITUTIONS—EXEMPT FROM TAXATION

April 15, 1930.

Dear Sir:

This will acknowledge receipt of your letter of April 11th on the above subject.

Paragraph 3, Section 897, Compiled General Laws, provides for certain specified exemptions of educational "institutions" within this State. In the case of *Dodge vs. Williams*, 50 N. W. Text 1107, it was held that while one may open and keep a private school, such private school would not necessarily be an "institution," inasmuch as the word "institution" implied some sort of legal organization such as would be involved in the creation of a corporation.

It would appear, therefore, that a private school would not be an "educational institution" within the meaning of the tax exemption statute, unless it was organized and carried out either as an incorporated institution or an incorporated association of several persons, who operated it as an institution of a permanent character.

The subject of tax exemption for education institutions was considered by the Supreme Court of Florida in the case of *Rast vs. Hulvey*, 77 Fla. 74. In that case the Court held that property which was to be exempted from taxation because it was the property of an educational institution would have to be used "solely" for educational purposes. In that case the Supreme Court used the following language:

"We do not think the property is exempt from taxation. Was such the case, following it to its lawful conclusion, every tax payer might exempt from taxation the home in which he lives with his family by having some member of his family teach school in the home each year * * * All laws exempting property should receive a strict construction and nothing will be held to be within the exemption which does not clearly appear so to be."

I am therefore of the opinion that only private schools which are operated by corporations or by unincorporated associations of persons can be considered an "institution" within the meaning of the tax exemption law. This will necessarily exclude dwelling houses and the like which are merely used for private teaching, whether any person lives in such dwelling house or not.

In no case can property be exempt from taxation which is not owned by the person claiming the exemption or to which the person claiming the exemption has neither a legal nor an equitable title.

Trusting this answers your letter, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX ASSESSOR—RIGHT TO PURCHASE AUTOMOBILE FOR USE IN
PERFORMANCE OF DUTIES

October 14, 1930.

Dear Sir:

The law authorizes the tax assessor to pay out of his gross compensation the actual, reasonable and necessary expenses of the operation of his office and the performance of his duties. The law contemplates and in fact requires that the county tax assessor make a more or less detailed personal inspection of the taxable property of the county as a basis for preparing his assessments.

Accordingly, it has been announced from this office in several previous rulings that in our judgment it is permissible for a tax assessor to purchase an automobile for official use and pay for same out of his gross income as a reasonable expense of his office.

Trusting this answers your inquiry, and with kind personal regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX COLLECTOR

CHIROPODISTS AND NATUROPATHS — CONSIDERED AS PHYSICIANS—TAXED AS SUCH

March 9, 1929.

Dear Sir:

The substance, and not the name, of a business is to be considered in collecting license taxes from the operations of the business. Chiropodists and Naturopaths are to be considered as physicians and are to be taxed as such under the law.

Outside parking lots operated for hire as a means for the storing of automobiles are within the purview of Section 811, Revised General Statutes of 1920, and a tax should be collected against same, as they are in legal effect, a garage, and should be taxed as such. The word "garage" is defined by the dictionary as being "a stable or station for automobiles," and is immaterial on the question of whether or not a covered shelter is provided for the automobiles. A place where automobiles are kept, whether covered or uncovered, is a garage, within the meaning of the law, and, the business of caring for automobiles, even though such caring for automobiles is on an open lot, is a garage and should be taxed as such under Section 811, Revised General Statutes of 1920.

Yours very truly,

FRED H. DAVIS, Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 375
NEWS COMPANIES—LICENSE TAX DOES NOT APPLY TO NEWS
DEALERS

March 13, 1929.

Dear Sir:

I have your letter of March 7th, in which you make inquiry as to whether or not Section 1206 (935) Compiled Laws of 1927, which reads, as follows:

"Owners or managers of news companies shall pay a license tax of Fifty Dollars: PROVIDED that this shall not apply to news dealers",

does not apply to and does not require payment of a license tax by newspapers published in your county, such as Miami Daily News, Miami Herald and other papers.

In my opinion, the section of law above quoted is intended to apply to news companies, which operate on trains and in depots, such as Interstate News Company, etc., and does not apply to the publishers of newspapers, whether large or small.

This interpretation of the law is reinforced by the consideration of the next section of the Statutes, which imposes a license tax on each traveling agent of Five Dollars each. Apparently, under the present laws of Florida, owners and publishers of newspapers are not subject to the payment of an occupational license tax to operate their business as publishers.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAXATION—RIGHT TO ENFORCE COLLECTION BY SEIZING
PROPERTY OTHER THAN THAT ON WHICH TAX ASSESSED

May 30, 1929.

Dear Sir:

Where personal property tax has been lawfully assessed against an individual, the statutes permit Tax Collectors to levy upon and seize personal property for unpaid taxes. The statutes do not limit the right of the Tax Collector in levying upon and seizing personal property for taxes to the particular personal property upon which the assessment was made and, therefore, any personal property owned by the taxpayer, whether that be the property for which the taxes were assessed or not, is liable to levy and sale to satisfy taxes which have been lawfully assessed against the individual taxpayer. See Sections 742, 743 and 744 Revised General Statutes.

Section 745 provides that all taxes assessed upon either real or personal property, from the date of such assessment, shall have all the force and effect of a judgment and execution at law against the owner of such property, which means that the amount of taxes due by a taxpayer can be levied against any property, real or personal, which the taxpayer owns but, when there is a liability for personal property taxes, a Tax Collector shall not include in his advertisement for sale of land,

under Section 756, the amount of personal property assessed against the taxpayer. A different method must be pursued to collect the personal property taxes by selling land.

Trusting this answers your inquiry of May 29th, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

MILLAGE FOR MAINTENANCE COUNTY SCHOOLS — COUNTY
COMMISSIONERS NOT AUTHORIZED TO REVISE DECISION
BOARD PUBLIC INSTRUCTION

October 10, 1929.

Dear Sir:

In the case of Tomasello vs. Board of Public Instruction, Santa Rosa County, 55 Florida 341, the Supreme Court held that the statutes of Florida do not authorize the County Commissioners to revise the decision of the County Board of Public Instruction as to the millage required for the maintenance of the necessary county schools when the millage is within the constitutional limitation and the estimate includes no illegal items and, in that case, the Board of County Commissioners was required by mandamus to levy the amount of millage which had been fixed by the School Board.

Trusting this answers your inquiry of October 9th, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

CARDS AND RADIOS—LICENSE TAXES

October 14, 1929.

Dear Sir:

The 1929 Law, Chapter 14491, imposes a separate license tax upon each "dealer" in playing cards or radios.

Most of the other provisions of the Law refer to "engaging in the business of" a particular occupation before they are liable to the tax. In my opinion, under the language of this Act, each person who handles radios or playing cards, whether licensed as a merchant or not, must take out and hold a separate license for dealing in playing cards or radios, as the case might be.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

SLOT MACHINES—LICENSE FOR

October 15, 1929.

Dear Sir:

In my opinion, paragraph (e) of Section 19, Chapter 14491 (Senate Bill 114-X), Acts of 1929, supercedes Section 978, Revised General Statutes, relating to the licensing of slot machines, which are included within the purview of said paragraph (e) of Section 19. This section provides that each person, firm or corporation who operates or places for public use vending machines or mechanical devices, etc., operated by coins, discs or slugs for dispensing merchandise etc., shall pay a license tax as therein prescribed.

Section 5 of Chapter 14491, provides that only one State license tax shall be required in any case, unless otherwise provided in the Act, which means that the State license tax insofar as these slot machines are concerned is collectable in the county where the principal place of business of the company is located and a separate county license tax is collectable in each additional county where the machines are placed or used.

Yours very truly,

FRED H. DAVIS, Attorney General.

**POLL TAX—RIGHT OF TAX COLLECTOR TO ISSUE POLL TAX
RECEIPTS TO PERSONS WHO SEND IN POLL TAXES TO-
GETHER WITH WRITTEN ORDER FOR
PAYMENT OF SAME**

October 15, 1929.

Dear Sir:

Section 8150, Compiled General Laws of Florida, reads, as follows:

"8150. (5887.) Receiving poll tax by collector from person other than person assessed; issuing receipt without payment in advance; proviso. — Any tax collector or other person acting under his authority or discretion, who receives or permits to be received any money or other thing of value in payment of poll or capitation taxes, from any person, firm, association or corporation, either by check, draft or any other method of payment, or any tax collector issuing a poll tax receipt without payment in advance therefor, other than the person whose poll or capitation taxes is to be paid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than three months: PROVIDED, that nothing in this section shall be construed to prevent any person paying, or any tax collector from collecting, the poll tax due by another person from any other person, who shall also pay, upon request of the person owing the poll or capitation tax, the real and personal taxes of the person for whom he offers to pay the capitation or poll tax. (Ch. 5929, Acts 1909, Sec. 16.)"

Under this section, it does not appear to be permissible for the Tax Collector to issue poll tax receipts to a person, who sends a written order together with \$1.00 for return to the person writing the order of a poll tax receipt in favor of the person who sent in such order by messenger or agent, unless there is also paid at the same time all the real and personal taxes of the person sending in the order. As I construe this statute, it means that a person may send a messenger down to the Court House with the money to pay all of his taxes, including his poll tax, and it is permissible for the tax collector to receive such money and issue a receipt for real and personal property taxes, including poll tax, but it appears to be against the Law for a person to send in his poll tax alone by a messenger to the tax collector and ask the tax collector to issue him a receipt to be returned to him by messenger. The Law seems to treat payment of poll taxes as a part of the functions of voting, which is not permitted to be delegated by

the voter to anyone else to perform. This does not appear to apply in cases where a man brings in the money to pay the poll tax of his wife, who does not personally appear before the tax collector, since the Law itself vests in the husband the management and care of the wife's estate, which estate is subject to the poll tax, and for that reason entitles the husband to pay the same as his wife's representative.

Trusting this answers your inquiry of October 7th, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

POLL TAX—COLLECTION OF AS PART OF PROPERTY TAX

January 9, 1930.

Dear Sir:

Section 913, Compiled General Laws, provides that both real and personal property owned by a taxpayer "shall be responsible for a poll tax." Therefore, a poll tax assessed against the owner of property is as much a tax upon the property of the taxpayer as the other assessed taxes on the same and such poll taxes should, in every case, be collected in connection with the collection of taxes upon real and personal property, as this appears to be distinctly provided for by Section 913, Compiled General Laws.

A poll tax is not only required to be paid as a prerequisite to voting, but such tax is a regular tax imposed by law regardless of whether the person wishes to vote or not and is subject to collection in like manner as other State and county taxes upon real and personal property. Many persons do not understand this and as a result many tax collectors fail to collect poll taxes at the time of collecting real and personal property taxes, but the fact that such practice exists does not make it legal when there is a specific statute providing otherwise as you will see by reading Section 913, Compiled General Laws.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

PERSONAL PROPERTY TAX—ENFORCEMENT AND COLLECTION.

January 16, 1930.

Dear Sir:

In my opinion, Sections 955 and 956, Compiled General Laws, constitute ample authority for tax collectors to enforce collection of personal property taxes by the levy of tax warrants for the purpose of collecting money due. I find nothing in the statutes which limits the right to levy on personal property to the particular property on which the tax is due and unpaid.

Under Section 958, Compiled General Laws, taxes have the force and effect of a *judgment and execution* at law against the tax payer. The Circuit Court of Duval County has recently held that this meant that the tax collector could levy upon real estate and have it sold to satisfy unpaid taxes due on personal property. The Court there refused an injunction

against the tax collector to restrain him from selling real estate for taxes against personal property.

Trusting this answers your inquiry of January 14th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

MINIATURE GOLF COURSE—LICENSE TAX ON.

January 24, 1930.

Dear Sir:

This will acknowledge receipt of your letter of January 21st on the above subject.

In my opinion a miniature golf course operated for profit at a certain fee per game is subject to the tax provided by Section 1170, Compiled General Laws, which reads as follows:

"1170—(899) GAME AND DEVICES—Games and devices, automatic or otherwise, and such as shuffleboard, throwing balls at figures and the like, *and not otherwise specified in this Chapter*, shall pay a license tax of ten dollars each."

This means that miniature golf courses operated for profit must be considered as a game and device not otherwise specified, and must pay a state license tax of ten dollars plus a county license tax of five dollars in order to operate.

So far as large golf courses are concerned, I do not think that the situation of those courses is comparable with the miniature course in as much as most of the large golf courses are operated or maintained by social clubs or as parts of hotels, and therefore do not fall within the description of a game or device, as that term is used in the Statutes.

Yours very truly,

FRED H. DAVIS, Attorney General.

**POLL TAX—AUTHORITY OF COLLECTOR TO RECEIVE PAYMENT
OF FROM PERSON OTHER THAN PERSON ASSESSED
FOR TAXES**

March 17, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 13th requesting my opinion on the above subject. I have on one or two occasions prior to this time undertaken to construe the provisions of Section 8150, Compiled General Laws of Florida, which leads as follows:

"8150. RECEIVING POLL TAX BY COLLECTOR FROM PERSON OTHER THAN PERSON ASSESSED; ISSUING RECEIPT WITHOUT PAYMENT IN ADVANCE; PROVISIO—Any tax collector or person acting under his authority or direction, who receives or permits to be received any money or other thing of value in payment of poll or capitation taxes, from any person, firm, association or corporation, either by check, draft or any other method of payment, or any tax collector issuing a poll tax receipt without payment in advance therefor, other than the person whose poll or capitation taxes is to be paid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more

than three months: PROVIDED, that nothing in this Section shall be construed to prevent any person paying, or any tax collector from collecting, the poll tax due by another person from any other person, who shall also pay, upon the request of the person owing the poll or capitation tax, the real and personal taxes of the person for whom he offers to pay the capitation or poll tax."

The meaning of this above quoted statute appears to me to be reasonably susceptible to the following interpretation:

(1) No tax collector shall issue a poll tax receipt without payment in advance therefor.

(2) No person, firm or corporation shall be permitted to pay poll taxes by check, draft or any other method of payment. This refers of course to paying the poll taxes of one or more voters other than the drawers of the check or draft.

(3) There is nothing in the statute to prohibit the voter from paying his own poll tax by check, draft or otherwise.

(4) There is nothing to prohibit the voter from mailing in his own check, draft or money order to pay for his own individual poll tax, but this would not permit the voter to send in the check of any other person, firm or corporation for that purpose.

(5) There is only one circumstance under which one person can pay the poll tax for another person, and that is when the person whose poll taxes he undertakes to pay is assessed on the tax books for some amount of tax on real or personal property, and the entire amount of taxes on the real and personal property, including the poll taxes, are paid at one and the same time.

The main purpose of the law was to compel each voter to pay his own poll tax with his own money, and to prohibit the payment of poll taxes by any person, firm or corporation for the voter's benefit. So long as the voter furnishes his own poll tax money, the law is not violated. But any other scheme or device by which a person, firm or corporation other than the voter, undertakes to pay poll tax for the voter, is unlawful.

There is nothing in the law which prohibits a voter from using any usual and ordinary means of communication with the tax collector for the purpose of sending in his money to pay his poll tax, such as mail, Western Union messenger, and the like. But when money is sent in to the tax collector by any of these methods, it should be accompanied by some proof or evidence to show the tax collector that the money is coming in from the voter himself, and is not being put up by some other person for his benefit. This may be in the form of an affidavit or perhaps a simple letter signed by the voter with his correct name and address reciting such fact.

Any voter who permits another person to furnish the money to pay his poll tax for him would be as guilty of violating this law and subject to the punishment therein prescribed as would be the tax collector who receives such money in violation of the law.

This Act was passed in 1909 and was intended to apply principally in prohibition elections where it was the practice of saloon keepers to pay up the poll taxes of large numbers of negroes and other easily con-

trolled individuals in order to help defeat a proposal to vote the counties dry under the then existing laws. It was also intended to break up the practice of certain large corporations in this State of paying poll taxes for a large number of their employees in order to control their votes by putting the employees under their obligation by reason of such payment.

The Act was never intended to put any unreasonable burden on the voter himself or to prevent the voter himself from using legitimate agencies such as mail and messenger for the purpose of making payment of poll taxes.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LAWYERS EMPLOYED IN LAW OFFICE—LICENSE TAX FOR.

March 21, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 19th on the above subject.

The subject of license taxes on lawyers is now covered by paragraph (i), Section 15, Chapter 14491, Acts of 1929, which imposes the tax upon every "practitioner" of law or any other profession.

A lawyer employed in a law office is just as much a practitioner of law as he would be if engaged in the practice on his own account. I do not see how such lawyers can escape liability for the license tax imposed.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

POLL TAX—AUTHORITY OF HUSBAND TO PAY FOR WIFE.

June 11, 1930.

Dear Sir:

While Section 8150 of the Compiled General Laws, prohibits the Tax Collector from receiving a poll tax from any person other than the person who is liable to such poll tax, this Section must be construed in connection with Section 5867 of the Compiled General Laws, which provides that the property of the wife shall remain in the control and management of the husband, and that the husband may use the rent, hire, issues, proceeds or benefits of the wife's property. Section 8150 must also be construed in connection with the 19th Amendment to the Constitution of the United States which confers the rights of suffrage upon women and in connection with Chapter 8583, Acts of 1921, which extended liability for poll taxes to women who had theretofore been exempt because they did not vote.

Section 913 of the Compiled General Laws makes both real estate and personal property responsible for a poll tax assessed against the owner, which construed in connection with Section 5867 of the Compiled General Laws, making the husband the custodian of his wife's property and manager of the same, in effect imposes the liability, as

well as the privilege, upon the husband to pay the poll tax of the wife, especially as long as the marital relationship continues and the husband is by law actually, or in contemplation of law, exercising the management and control of his wife's property out of which the poll tax assessed against her would ordinarily be paid.

I have several times expressed the opinion based upon the foregoing consideration, that the husband may lawfully be permitted, and perhaps required, to pay the poll taxes of his wife, however, in the event a married woman is made a free dealer and given the right to manage and control her own property, without interference from her husband, the foregoing rule would not apply, because in that event the husband having been discharged from all management and control of his wife's property is necessarily discharged from any liability arising in connection therewith.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX SALE NOTICE—LENGTH OF PUBLICATION.

June 24, 1930.

Dear Sir:

Section 3 of Chapter 14573, Acts of 1929, provides that tax sale notices shall be published "once each week for four consecutive weeks." The quoted language was construed by the Supreme Court in the case of Myakka Company vs. Edwards, 68 Fla. 372, 67 So 217, where the Supreme Court of Florida held that a publication once a week for four consecutive weeks meant a publication for twenty-eight days one time in each week of the twenty-eight days.

It appears to me that the ruling of the Supreme Court in the case of Townsend et al, vs. Brown, 67 So 869, has been done away with by the change in the statute which was made to bring the tax sale notice in line with the ruling of the Supreme Court construing the constructive service law which applies to four publications.

I find nothing in the statute which indicates that there is any necessity of publishing the notice more than four times because the law specifically refers to "four insertions" in fixing the charges which are to be paid the newspaper for making the publication.

It therefore appears to me that any publication of the tax sale notice is sufficient where the first time the notice is published is more than twenty-eight days from the day set for the tax sale and the notice is then continuously published once in each week thereafter for four consecutive weeks prior to the tax sale. In other words the publication of the tax sale notice can in my opinion be in any four consecutive weeks that are prior to the date designated in the notice for the tax sale, provided of course that the period of publication immediately preceding the tax sale is not so unreasonably far in advance of the tax sale as to amount to a substantial failure to comply with the intent of the law that adequate notice shall be given.

Chapter 14572, Acts of 1929, which now governs these matters, has attempted to abolish a great many of the technicalities which formerly

defeated the legality of tax sales, and I think that four publications in your county, the first of which was on June 5th, the others being the 12th, 19th and 26th respectively, are adequate and legal to support a tax sale to be held on July 7th.

Trusting this answers your communication of June 19th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CIGAR FACTORY—LICENSE TAX—NUMBER OF EMPLOYEES.

October 10, 1930.

Dear Sir:

Sub-paragraph (h) of Section 8 of Chapter 14491, Acts of 1929, provides that every person, firm or corporation operating a cigar factory in which the business of manufacturing cigars is carried on shall pay a license tax, the amount of which shall depend on the number of employees. Where there are less than 25 employees the tax is \$5.00 and this is also required whether there are any employees or not.

Sub-paragraph (e) of Section 13, Chapter 14491, provides that each person, firm or corporation operating a machine shop for public use shall pay a license tax, the amount thereof depending upon the number of employees.

In my opinion this requires a license tax of \$5.00 of every such person, firm or corporation not employing over five, regardless of the minimum.

It is also my opinion that this act supersedes the requirement for the payment of a license tax by persons, firms or corporations operating machine shops by any prior act.

Yours very truly,

H. E. CARTER, Assistant Attorney General.

LICENSE TAX—DRY CLEANERS AND DYE WORKS.

October 23, 1930.

Dear Sir:

This is in answer to your letter of October 22nd on the above subject.

The rule is that where a person is engaged in two lines of business which might be covered by either of two separate licenses provided therefor, one of which licenses is higher than the other, that the tax collector should collect the highest license which would be applicable.

Our license laws contain certain provision which overlap each other, such as those you mention. For example, a dry cleaner only pays \$10.00 in cities and towns of 10,000 inhabitants or more under Section 1339. Under Section 1138 dye works and steam cleaners pay \$15.00 in the same cities and towns. It was evidently intended by the Legislature that where a dye works is maintained in connection with a cleaning establishment that \$5.00 extra license tax should be paid therefor.

This is the way the law has been construed for a number of years in the past.

Yours very truly,

FRED H. DAVIS, Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CITY OFFICERS

The following are a few of the opinions rendered by this office to the City Officials in various cities of the State which may be of interest to the public generally:

SCHOOL PROPERTY—EXEMPT FROM TAXATION.

April 13, 1929.

Dear Sir:

Under the provisions of Section 697, paragraph 2, Revised General Statutes of Florida, all public property owned by the several counties and school districts in this State used or "intended" for public purposes shall be exempt from taxation.

The situation is different where school properties are owned by a public school district than it would be if such properties were owned by a school, which was provided in nature. In the latter case, only that part of the school property actually used for educational purposes would be exempt. Since public school districts of this State are not authorized to hold property except such as is "intended" for public school purposes, even though not actually used for such purposes, all property actually owned by school districts is exempt from taxation for State, County or municipal purposes.

Trusting this answers your inquiry of April 9th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX EXEMPTIONS—FROM TAXATION OF PROPERTY OWNED BY
MASONIC HOME.

April 25, 1930.

Dear Sir:

Chapter 12088, Acts of 1927, provides for incorporating the Masonic Home of Florida as a charitable institution.

Under Section 1 of Article 9 of the Constitution of Florida the Legislature is permitted by specific statute to exempt by law from taxation any property which it may decide should be exempted for charitable purposes. Insofar as the Constitution is concerned, it does not itself grant any exemption, but leaves that matter entirely to the Legislature.

The Legislature in enacting Chapter 12088, Acts of 1929, appears to have exercised the power vested in it under Section 1 of Article 9 of the Constitution, when it incorporated in said Act the following provision:

"Section 2. All properties of the Masonic Home of Florida shall be free and exempt from taxes in the State of Florida."

I am therefore of the opinion that in view of this specific legislative determination of the matter that property owned by the Masonic Home in Florida is free and exempt from taxation in the State of Florida, state, county and municipal. It seems to have been the theory of the Legislature that the Masonic Home being an orphanage and otherwise maintained for exclusively charitable purposes is performing a set function by

caring for the indigent who would otherwise have to be cared for by the State, and consequently, that the exemption is justified as a matter of policy.

As you will notice, the exemption is stated in broad and sweeping language, which appears to be all inclusive. It undoubtedly extends in scope to any property owned by the Masonic Home of Florida, including the store building you mention in your letter of April 22nd.

Yours very truly,

FRED H. DAVIS, Attorney General.

OCCUPATIONAL LICENSE TAX—METHOD OF DETERMINING
LIABILITY.

January 17, 1930.

Dear Sir:

Where a blacksmith shop constitutes a separate and distinct unit when operated as such, it is as much subject to a license tax as a blacksmith shop as it would be if it were set apart by itself. The fact that a man attaches a blacksmith shop to a machine shop and operates it a part of the machine shop does not exempt it as a blacksmith shop. On the other hand, if a person operates a machine shop, which is the principal business being done, the mere fact that there is provision made in the machine shop for doing some blacksmith work in connection with the machine shop, would not require a separate license for the blacksmith shop. The test in the matter is whether or not the blacksmith shop constitutes such an independent part of the whole business as to be considered a shop in itself merely operated in conjunction with the machine shop instead of as a subordinate part of the machine shop.

Yours very truly,

FRED H. DAVIS, Attorney General.

SEARCH WARRANTS—SERVICE ON SUNDAY

May 8, 1930.

Dear Sir:

Section 4275, Compiled General Laws, provides that service of any legal paper on Sunday shall be void, and that the person serving or executing the same shall be liable for a suit in damages for so doing.

However, the law provides a special procedure by which an officer can obtain authority to serve a legal paper on Sunday. This special authority would apply to a search warrant as well as to any other paper. The procedure is to obtain the oaths of two respectable persons before the judge or justice of the peace or magistrate of the town that you have good reason to believe that any person liable to the service of the search warrant intends to withdraw himself or escape from the State under cover of protection of Sunday, in which case the judge has authority to make a special order or certificate permitting the warrant to be served on Sunday the same as on a week day. But unless this special certificate of the judge is obtained service of a search warrant on Sunday is not authorized.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

MUNICIPALITY—AUTHORITY TO IMPOSE RETAIL FISH TAX

June 10, 1930.

Dear Sir:

Section 1836, Compiled General Laws, provides that no county, city, town or municipality shall impose any further tax upon any person who has already been subject to and paid a tax to the State Shell Fish Department in connection with fishing.

The above Section of course refers to those fishing licenses only which are issued by the State Shell Fish Commissioner and not to the licenses issued by the Fresh Water Fish and Game Commissioner.

Under the law Lake Okeechobee is under the jurisdiction of the State Shell Fish Commission, although it is fresh water.

Trusting this answers your letter of May 23rd, which I regret I have been unavoidably delayed in answering, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

XIV.

OPINIONS, UN-OFFICIAL

The following are a few of the opinions rendered by this office to various persons in the State which may be of interest to the public generally:

COUNTY COMMISSIONERS—REQUIRED TO ACT AS BOARD OF
EQUALIZERS.

March 18, 1929.

Dear Sir:

Replying to your letter of the 15th inst., in which you enclose the letter of Mr. J. C. Jackman, requesting an opinion as to the power of the Board of County Commissioners to equalize taxes in the absence of complaint, I beg to advise that the statute makes it the duty of the Board of County Commissioners, as a Board of Equalizers upon the completion of the assessment roll, together with the County Tax Assessor, to review, perfect and equalize such assessment, and such duty devolves upon them whether there be any complaint or not.

This is found in Section 929 of the Compiled General Laws of Florida, 1927.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—CHAIRMAN ENTITLED TO VOTE
WHEN TIE EXISTS.

May 17, 1929.

Dear Sir:

The Chairman of a Board of County Commissioners is as much a member of the Board of County Commissioners as any other member, and is entitled to vote as a member, regardless of whether or not a tie exists in the vote of the Board.

Trusting this answers your letter of May 14th, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX ASSESSORS—DUTY TO CARRY OUT TOTALS ON ASSESS-
MENT ROLL AS PART OF HIS DUTY TO COMPLETE
SUCH ASSESSMENT ROLL

July 24, 1929.

Dear Sir:

This will acknowledge receipt of your request of my opinion as to whether or not under existing provisions of law it is the duty of the County Tax Assessor to total the column of figures upon his assessment roll so as to show the total tax assessed against each piece of property.

Section 728 of the Revised General Statutes 934, Compiled General Laws, refer to "completing" the assessment roll by the Tax Assessor, and provides that it shall be the duty of the County Assessor of Taxes to calculate and carry out the total amount of county taxes, and the

total amount of School District or other special taxes in separate columns prepared for that purpose in the assessment roll, setting opposite to the agreed sum set down as a valuation of real and personal property the respective sums assessed as taxes thereon in dollars and cents. This Section also provides that the Tax Assessor shall add up the columns of the assessment roll showing the assessment and taxes contained in such roll, and make therein such recapitulation tables as may be required by the Comptroller. This Section also requires that he make out two copies of the assessment roll when thus "completed."

Section 936 provides that one copy of the assessment roll shall be transmitted to the Comptroller, one copy delivered to the Tax Collector, and the original filed in the office of the Clerk of the Circuit Court.

In my opinion, the assessment of property is not "completed" within the meaning of the law until the Tax Assessor has not only calculated and carried out the various items of taxes due upon the property, but has totaled up the roll for each piece of property the total amount for which that property is liable, consisting of the several items of taxation out of which the total liability arises. Section 929 of the Compiled General Laws requires the Tax Assessor to "complete" his roll.

The form of warrant to the tax roll provided by Section 734 of the Revised General Statutes, 942 of the Compiled General Laws which is signed by the Tax Assessor requires the Collector to collect from each of the persons and corporations named in the roll the taxes set down in each roll opposite each name, which contemplates that the command of the warrant is to collect a certain aggregate amount of taxes from each person named on the roll, which amount must be set down upon the roll "opposite each name." If the County Assessor of Taxes does not total the amount of taxes due upon each item of property, but leaves that matter to be attended to by the Tax Collector, the effect is to cast entirely upon the tax roll relating to the assessment of taxes to be paid by an officer who is not the Tax Assessor, and which is not in accordance with the letter and spirit of the law, which contemplates that the assessment roll upon which the taxes are assessed shall be a roll containing everything complete in itself and put there by the Tax Assessor before the roll ever leaves the Tax Assessor's hands. It seems to me that a tax assessment roll upon which the items of property for taxes have not been totaled so as to show the total tax for which each piece of property is liable is not "complete" within the meaning of the law.

Yours very truly,

FRED H. DAVIS, Attorney General.

CLERK CIRCUIT COURT—COMPENSATION AS CLERK COUNTY COMMISSIONERS.

September 27, 1929.

Dear Sir:

Section 3085, Revised General Statutes, provides that the Clerk of the Circuit Court as Clerk of the Board of County Commissioners shall be paid compensation to be fixed by the Board of County Commissioners, upon a basis proportionate to the compensation allowed by law for other

services. Under this Section, the Board of County Commissioners have the option of either paying the Clerk a reasonable salary proportionate to the amount of fees he would receive if he were paid on a strictly fee basis, or they have the option of paying him upon a fee basis entirely.

If the County Commissioners undertake to pay on a fee basis entirely, the requirement of this statute is that the fees shall be based upon the fees allowed by law for other services. Which means that the Board will have to pay the Clerk according to the scale of fees fixed by Section 4867, Compiled General Laws of Florida. The County Commissioners have no power to take from the Clerk of the Circuit Court any of the duties imposed on him by law to audit and approve accounts audited and approved by the County Commissioners. And if they undertake to compensate the Clerk for services on a fee basis, then his fees must be paid in accordance with the regular fee bill provided for the Clerks of the Circuit Court. Section 3085 specifically adopts the regular scale of compensation fixed by law for Clerks of the Circuit Court, as the guide to be followed by the Board of County Commissioners in fixing the compensation of the Clerk.

While the County Commissioners have a certain discretion which they can exercise in the matter, this does not mean that the Commissioners can ignore the amount of work which the Clerk has to do as Clerk of the Board of County Commissioners and make an unreasonable restriction on his compensation.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—COMPENSATION AS JUDGE JUVENILE COURT.

October 2, 1929.

Dear Sir:

Section 3710, Compiled General Laws, provides "the county Judge shall be paid such compensation as may be fixed by the County Commissioners". In this respect, the law is similar to Section 4868, which requires the County Commissioners to pay the Clerk of the Circuit Court compensation for acting as Clerk of the Board of County Commissioners. In my opinion, it is the duty of the Board of County Commissioners to allow the County Judge some compensation to reimburse him for the work done as Juvenile Judge, but the amount of this compensation is entirely up to the Board of County Commissioners who may make the same, small or large, as the circumstances warrant.

Trusting this answers your inquiry of September 18th, which I could not find time to answer at an earlier date, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX EXEMPTIONS—ON PERSONAL PROPERTY.

March 28, 1930.

Dear Sir:

The law contemplates that taxes shall be assessed on a full cash value, not a 50 per cent valuation.

At the same time, the Supreme Court has held that uniformity and equality is the main thing to be accomplished, and if everybody is assessed

on a 50 per cent basis it is perfectly proper. The \$500 exemption on household goods, etc., is supposed to be \$500 on the assessed valuation of same. But at the same time, if the assessed valuation of same is purposely and unlawfully made 50 per cent of true value instead of 100 per cent of true value, I think the tax assessor not only is justified in making a corresponding pro rata reduction in the exemption, but that it is his duty to do so.

Theoretically and legally, the \$500 exemption is intended to apply upon the assessed valuation based upon a true and lawful valuation at the full cash value of the property.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE ATTORNEYS AND COUNTY SOLICITORS — DUTIES AND RESPONSIBILITIES OF.

March 29, 1930.

Dear Sir:

This will acknowledge receipt of your letter of March 25th on the above subject.

It appears to me that state attorneys and county solicitors have concurrent jurisdiction to investigate all criminal offenses committed within their respective jurisdictions. Where a criminal Court of Record has been created, the primary responsibility, of course, rests upon the county solicitor to investigate and prosecute those offenses which would be triable in the criminal court, because no person can be prosecuted for felony in a criminal court, even if indicted by a grand jury, unless the county solicitor files in that Court an information against the accused.

At the same time, a state attorney has authority to bring to the attention of a grand jury any evidence which tends to show a violation of the criminal law, even though, if an indictment were found, it would have to be certified to the criminal court to be there prosecuted on information filed by the county solicitor. There is no particular duty resting upon a state attorney to handle any matter before the grand jury which would not be triable in the Circuit Court if an indictment were found, although he has full power and authority to investigate every form of criminal violation.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

P. S. It would seem that the state qualifying fee should be included in the campaign expense statement filed by the candidate. In fact, it has been the practice for years to include such fees.

See Section 8192, Compiled General Laws, which specifically mentions fee for qualifying as a campaign expense.—F. H. D.

ELECTIONS—EXPENSES—ASSESSMENT OF FOR PRIMARY ELECTION.

April 3, 1930.

Dear Sir:

Under the authority of the primary law, a flat assessment of 3 per

cent of the annual compensation of an officer is levied against each candidate in the primary for the privilege of running for the office in such primary. The money derived from these fees is to be used by the county for the purpose of helping defray the expense of holding the primary election. Insofar as this particular fee is concerned, it is a straight 3 per cent assessment—no more and no less—and is paid to the Clerk of the Circuit Court in his capacity as Clerk of the Board of County Commissioners.

In addition to the above 3 per cent, the Executive Committee of the County is authorized to make a special assessment of as much as 2 per cent of the annual salary of the office. However, the law distinctly provides that such assessment must be made by the Committee not later than March 15th and a copy of the assessment filed with the Clerk of the Court or it cannot be made. See Section 382, Compiled General Laws.

The levy of a Committee assessment is entirely optional with the Committee. If the Committee does not need the money, no levy need be made, but in any event if you have not already made the assessment it is too late to make it now, since it should have been made on or before March 15th.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TEAR GAS—STATUS OF FOUNTAIN PEN DESIGNED TO DISCHARGE.

April 9, 1930.

Dear Sir:

Your letter of April 3rd making inquiry as to whether or not a device resembling a fountain pen but which is designed to discharge a small cartridge of tear gas would constitute a weapon and be unlawful under the laws of Florida has been called to my attention.

There is no law in Florida which prevents the sale of fire arms. The only law we have relates to the carrying of concealed weapons and the unlawful possession of weapons. In my opinion, a fountain pen which is designed to discharge tear gas would be just as much of a weapon as would a pistol designed to discharge a bullet as such a fountain pen could undoubtedly be used for the purpose of disabling an adversary.

The legal definition of a weapon is an instrument of offensive or defensive combat. It is therefore clear that a tear gas fountain pen is as much a weapon as is a pistol, dirk, slung shot or billy. Our law prohibits the carrying of concealed weapons of any kind and also prohibits the improper exhibition of dangerous weapons under certain circumstances. The only law we have against selling weapons is that embraced in Section 7206, Compiled General Laws, which prohibits the manufacture and sale of slung shots or metallic knucks commonly known as brass knucks.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

April 15, 1930.

Dear Sir:

This will acknowledge receipt of your letter of April 4th on the above subject.

Slot machines may be either gambling devices per se or they may become gambling devices by the manner in which they are used. In fact, the latter class of cases may involve any subject which involves an element of chance. As, for example, we have a special law prohibiting betting on elections—the election is not unlawful but betting on the election is unlawful. Likewise, with regard to other elements of chance on which gambling may be committed.

The laws of this State authorize the sheriff or any peace officer who has good reason to believe that gambling is being carried on to enter any place of business, and forcibly, if necessary, and without warrant arrest any person violating the provision of the gambling laws.

The statutes also authorize the sheriff or any such peace officer, when any of the devices or apparatus *commonly used for gambling purposes* are found in any house, room, booth or other place and used for the purpose of gambling to seize the same and hold them subject to the discretion of the Court to be used as evidence and afterwards destroyed.

It will be noticed from an examination of the statutes that only those machines or apparatus which are "commonly used for gambling purposes" are subject to summary seizure and confiscation. Undoubtedly, any kind of a slot machine can be used as a gambling device whether it is a gambling device per se or not. Some slot machines are specially devised for the purpose of gambling, that is, are subject to seizure and confiscation wherever found. Others are so constructed as not to be designed for gambling, although, inasmuch as they involve an element of chance, they can be so used by operating the machine in an unnatural manner not necessarily contemplated by the maker of the machine. Even such last mentioned class of machine would probably be subject to seizure and confiscation if it were knowingly permitted to be used in an unnatural and unlawful way for gambling purposes. But this would not apply to an innocent third party who owned such machine and merely placed the same on a leased contract basis in some legitimate place of business.

For example, the owner of a perfectly legitimate and harmless slot machine has the right to lease the same to a store keeper engaged in a lawful business, and the mere fact that the store keeper in violation of his contract with the owner allowed the machine to be used as a gambling device by operating it in an unlawful way not contemplated by its makeup, would not make the owner suffer the loss of his machine, unless after notice of the violation of the law by the store keeper he still should leave his machine in the store keeper's place of business.

The situation is exactly like that involved in the violation of the liquor laws. If a man borrows my car for a lawful purpose and without my knowledge or consent hauls whiskey in it, it cannot be confiscated under

the State law, if I go into Court and show that the liquor law was violated without my knowledge or consent.

On the other hand, if I knew about the liquor law violation, the car could be confiscated.

Exactly the same rule prevails with slot machines. If the owner of such machines knows that they are being used for gambling purposes, even though they were not designed per se for gambling, and he knowingly permits such gambling to be carried on with his machines, they are subject to confiscation.

But, on the other hand, if he leases the machine to a man whom he thinks is a law abiding citizen engaged in a lawful business, he as the owner cannot be deprived of his property in the machine until he acquires knowledge of the unlawful use of the machine and fails to do anything to stop it.

Referring to the paragraph of my opinion to Sheriff Hallman which is quoted in your letter, I beg to advise that the word "case" was intended to read "cases."

I have just noticed some recent Federal Court cases which have involved the issuance of injunctions to protect slot machines from seizure and confiscation when they were not designed for violating the gambling law. In other words, the mere fact that a machine is a slot machine does not make it unlawful. To be unlawful it must either be especially designed for gambling, or must be used for gambling though not so designed.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

PARENTS—CHILDREN REQUIRED TO SUPPORT INDIGENT PARENTS

April 24, 1930.

Dear Sir:

Answering your letter of April 21st I beg to advise you that Florida is one of the few states in the Union which has a specific law requiring children of parents who are unable to support themselves to make provision for the support of such parents.

Under Sections 5873 to 5875, Compiled General Laws, any person having knowledge of the fact that there are persons who are unable to support themselves but who have children who are able to make provision for their support, may file an information before the Justice of the Peace of the proper district stating that said persons have made no adequate provision for the support of their father and mother, whereupon the justice of the peace causes a summons to be issued and a trial to be had, and makes an order assessing the children for such amount as may be necessary for the support of their parents. This order is enforceable as an execution and also operates as a garnishment on the wages of such children to compel them to carry out the Court's order.

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL LAWS—AUTHORITY OF TRUSTEES TO REQUIRE PUPILS
TO PAY TUITION ATTENDING SCHOOL OUTSIDE OF
DISTRICT IN WHICH PUPIL RESIDES.

April 24, 1930.

Dear Sir:

Answering your letter of April 21st I beg to advise that school trustees have the right to charge tuition to any pupil attending such schools of the district who lives outside of the district. But the Board of Trustees has no right to compel any pupil living inside of a special tax school district to pay tuition to attend the schools in such district.

In many counties such tuition is charged owing to the lack of school funds, but it can only be collected if voluntarily paid.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX EXEMPTION—CHURCH PROPERTY.

April 26, 1930.

Dear Sir:

The present law, paragraph 4 of Section 897 of the Compiled General Laws only, authorizes the exemption of such church property as consists of a house of public worship and the lots on which the same are situated, together with pews and furniture. In other words, only the property on which the buildings are actually located and used for church purposes can be exempt under the present law. A vacant lot owned by the church, even though intended for church purposes in the future would not be exempt under paragraph 4 of Section 897.

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—REGISTERED NURSES

May 6, 1930.

My Dear Madam:

The 1929 law provides that nurses should pay a license tax of \$15.00 per annum, the same as doctors and lawyers. This license tax is based upon the occupation of the nurses and the fact that she holds a certificate giving her a special privilege granted by the State to do things which ordinary persons are prohibited from doing, unless they have such certificate.

It would appear that a registered nurse employed by a hospital is as much subject to this license tax as would be a doctor or other person employed in connection with such hospital, unless of course the hospital is one owned or operated by a county or city, in which case the nurse as a county or city employee might become exempt from the license.

The mere fact that she works in a hospital does not exempt her under the new law.

Trusting this answers your letter, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—EXPENDITURE OF MONEY ALLOWED CANDIDATES

May 7, 1930.

Dear Sir:

The Florida election laws are very strict concerning the expenditure of money for advertising in Primary elections. Not only is the amount of money which may be spent limited, but the purposes for which the money may be spent is limited. The only kind of advertising permitted to candidates under Section 8182 of the Compiled General Laws is newspaper advertising, advertising in campaign books, and general printing such as commonly covered under the designation of "campaign literature", meaning cards, placards, hand bills and the like.

Candidates who violate the law in regard to spending money for illegal purposes, or in spending more than allowed by law to be spent for all purposes, are subject to a fine of not more than \$1,000.00, or imprisonment not exceeding one year, or both and after conviction are disqualified and ineligible to hold any office under the laws of Florida, and in addition, he forfeits any nomination he may obtain in the particular primary.

The above law was passed many years ago, before the days of moving pictures and radios, but regardless of that fact, it is a law and I have no authority to advise any one that they can disregard it.

Trusting this answers your letter, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—CONDUCT OF OFFICIALS IN HOLDING ELECTIONS

May 10, 1930.

Dear Sir:

The following will answer your letter of May 7th on the above subject.

Section 308 provides that each polling place shall be presided over by a board of inspectors, and that each polling place shall be railed off and constructed with an opening an one end or side as an entrance for the voter, and opening at the other for his exit, as a polling place at which to hold the election.

The law provides that but one voter shall be allowed to enter but one polling place at a time, and no one except the *inspectors* of the election (not even the clerk of the election) shall be allowed to speak to the voter while in the polling place casting his vote.

Section 308 further provides that even an *inspector* shall not have the right to speak nor interfere with any voter concerning the manner of his voting or any ballot he may vote.

Section 309 provides that the polls shall be opened at 8:00 in the morning and kept open until sundown with an adjournment between twelve and one o'clock for one half hour. During all the time that the election is held and also during the recess taken by the inspectors for

lunch, the ballot box is required to be kept in the possession of and in view of two of the inspectors, who shall not have the key thereof.

Section 309 also specifically provides that all during the election and during the canvass of the vote the ballot box *shall not be concealed from the public.*

The latter provision of the law is important and it should be borne in mind that when a building is designated as a polling place, that this building must be so arranged that the public can approach near enough to the ballot box to at all times see the ballot box, while the election is being held and while the votes are being counted.

Section 327 provides that no person shall be permitted within fifteen feet of the polling place. This means that no person shall be permitted nearer than fifteen feet to the ballot box nor any election booth where voters are casting their votes.

The law provides that a deputy sheriff shall be appointed to act at each polling place, but the following is a quotation from Section 327, Compiled General Laws, relating to the rights of such deputy while on duty:

"No sheriff, deputy sheriff or city policeman shall enter the polling place without permission from the majority of the inspectors of the election except to cast his own ballot."

Deputy sheriffs are not permitted to assist voters in marking their tickets, even when the voter is entitled to have assistance under the law. Section 332 requires that the *inspectors* shall render assistance when necessary. Not even the clerk of the election is entitled to render such assistance.

The latter is a very important provision, as a contest is now pending in one of the courts of this State based upon allegations that there was improper interference by sheriffs' deputies with the electors in marking ballots and counting the same, so I am informed.

Trusting this gives you the information you request in your letter of May 7th, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL BOARD—RIGHT TO CHANGE BOUNDARY LINES OF SCHOOL DISTRICTS

May 10, 1930.

Dear Sir:

The situation mentioned in your letter of May 1st is indeed unusual.

As a matter of practical operation the election in June will only result in a nomination for the office of member of the school board. If the school board in July changes the boundaries of the district and the people in November vote for a member of the new district as its boundaries have been changed, it will mean that the member elected from your district will have to move into the district or the office will be declared vacant and the Governor will appoint someone to fill in.

This seems like legislating a man out of office but that is a matter for the school board to decide before it makes the change. The school

board would apparently have a perfect right to make provision for changing the districts to take effect two years from now instead of at the present time, in order to avoid legislating a man out of his district.

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS — REFUNDING FEES TO CANDIDATES WHO RETIRE
FROM RACE

May 22, 1930.

Dear Sir:

Qualification fees paid by candidates cannot be refunded when the candidate through his own act in failing to comply with the law has disqualified himself as a candidate. Neither can these fees be returned to the candidate when he retires from the race voluntarily if he waits until after the final day for qualification in order to retire.

The last day for qualification was May 8th. If the candidate retired on or before that time he can get his money back because the ticket is not yet made up in the eyes of the law. But after the last day of qualifying the ticket is in the eyes of the law made up as of that date and the money cannot be refunded.

Trusting this answers your inquiry of May 30th on the subject, I am
Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—RIGHT OF PERSON TO VOTE IN DISTRICT IN WHICH
HE DOES NOT RESIDE

May 26, 1930.

Dear Sir:

This is in response to your letter of May 21st on the above subject. Section 248. Compiled General Laws, contains a paragraph which reads as follows:

"(7th). No person shall be permitted to vote, or shall such vote be counted, unless the person registers to vote in the election district in which he or she shall have his or her permanent place of residence."

This is a law of the State and of course must be obeyed. Any violation of this law will not only cause the vote to be thrown out but may subject the violator to prosecution for illegal voting. It means of course that no person shall be permitted to register and vote in a district in which he does not live, simply because he wants to register and vote in that district.

At the same time, it must be borne in mind that where a man has once properly registered to vote in a district in which he is a permanent resident at the time he registers that he thereby acquires a proper voting domicile, which he is entitled to keep in that place until such time as he in fact and in law acquires a legal voting domicile at some other place in the county by taking up his permanent residence in some other place. Whether or not a new voting domicile has been acquired is a

question of fact which should be passed on by the inspectors of the election in the event the voter's attempt to vote is challenged.

The supervisor of registration also has the power and it is his duty to make transfers of voters to their proper voting precincts when he knows that a voter has actually and permanently removed from the precinct in which he was living and had registered.

At the same time, the supervisor is under no duty to do this unless it is shown to him beyond any reasonable doubt that the voter has moved. As a general rule a voter having once registered properly in a particular place where he lives is entitled to keep his registration there so long as he bona fide contends that he has never permanently moved to some other place.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—AUTHORITY OVER FUNDS OF

June 2, 1930.

Dear Sir:

This is in answer to your letter of May 29th on the above subject.

1. Where a school district votes ten mills as provided by the Constitution and laws of the State, this millage must be levied for the next ensuing two years. There is no authority to reduce it below the amount voted.

2. The Board of Public Instruction of the county has no right to take any part of the millage received in a special tax school district and use it for schools in any other district. All moneys received by taxation in a special tax school district is by the Constitution mandatorily required to be spent solely for the support and maintenance of schools within the district. In one circuit at least an injunction has been issued to prevent this practice of taking special tax school district moneys and spending it outside of the district.

3. I find no authority given by law to the trustees of a special tax school district to employ an attorney. If any such power exists it would have to be by implication and I have serious doubts as to whether any such power exists at all because of the fact that the Constitution requires every dollar of special tax school district money to be spent solely for the schools in the district. Payment of attorneys' fees would appear to violate this principle. Of course, in the case of a bond issue the trustees might have authority to employ an attorney to validate bonds and pay such attorney out of the proceeds of the bond issue as a necessary incident thereto.

4. The control of the expenditure of special tax school district funds is in the hands of the trustees of the district. That is the purpose for which the trustees exist. While the Board of Public Instruction issues the warrants, the Board of Public Instruction of the county has no

right to spend the district's money except with the approval of the trustees. See Section 716, Compiled General Laws.

5. Primary jurisdiction and control of all school affairs including the school property is in the County Board of Public Instruction. School trustees have only a limited authority in connection with the management of the schools. Insofar as finances are concerned, they do have the right to say for what purpose the finances shall be spent subject to the approval of the county Board of Public Instruction. In short, neither the Board of Public Instruction of the county nor the trustees of a special tax school district can spend district moneys by themselves alone.

Trusting this answers your letter of May 29th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

BOND OF PUBLIC OFFICER

July 8, 1930.

Dear Sir:

Suits upon official bonds of public officers such as deputy sheriffs are brought in the name of Doyle E. Carlton, Governor of the State of Florida, for the use and benefit of A vs. B, Deputy Sheriff, as principal and ABC Company as surety.

The statute provides that the real party in interest on any contract may bring his suit to enforce such contract and this is held to be sufficient to authorize suing on a bond given to the Governor to enforce a right in favor of a private individual. You may either bring it against the officer alone or you may join his surety with him, as I understand the practice.

Trusting this answers your letter of June 28th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATION—PROCEDURE FOR CHANGE OF NAME.

June 12, 1930.

Dear Sir:

This is in answer to your inquiry of June 7th on the above subject. Section 6017, Compiled General Laws, reads as follows:

"CHANGE OF NAME—Any corporation desiring to change its name may so resolve at any general meeting of the stockholders, and upon filing a certificate of the resolution under the common seal, in the office of the Secretary of State, letters patent shall issue reciting the change of name, which letters patent shall be recorded as provided in the last section. No two corporations shall bear the same corporate name."

It is my opinion that the language used in the statute "any general meeting of the stockholders" does not limit the power of the corporation to adopt the requisite resolution for a change in the name of the corporation only at the *annual*, or other *regular* meetings prescribed by the charter of the corporation, but that the statute should be given that construction which permits the requisite corporate action for change of name at *any* meeting of the stockholders which is duly called and held in the

manner prescribed by law, of which all of the stockholders have notice.

So far as I am advised this statute has been so construed by the officers who have administered it ever since it was adopted, and the Secretary of State's office will show that many changes of names of corporations have been accepted through corporate action taken at meetings other than the annual or regular meetings of the corporations provided for in the charter. It seems to me that this contemporaneous practical construction of the statute is entitled to great weight, if not controlling.

See *Consumers Electric Light and S. R. R. Company vs. Bloxham*, 36 Fla. 519, 18 So. 444; *State ex rel Comfort vs. Leatherman*, 127 So.——.

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS DISTRICTS—CHANGE OF.

June 13, 1930.

Dear Sir:

This is in answer to your letter of June 7th on the above subject.

Section 2150, Compiled General Laws, is at least susceptible of construction to the effect that county commissioners districts can be changed or altered on a petition of two-thirds of the registered voters of the districts involved in the aggregate. Of course, the statute might be construed as requiring a two-thirds petition from each district considered by itself, but it appears to me that such a construction would tend to defeat the evident legislative purpose which was to preserve the equality of commissioners districts in territory and population as near as possible with each other.

It would seem, therefore, that if the change to be made involved a change between two districts, leaving the other districts as they stood, that the change could be made upon a petition signed by two-thirds of the combined voters of the two districts involved, plus a three-fifths vote of the whole board of commissioners.

Of course, if there were a general re-alignment of all the district lines in the county, it would appear that there should be a petition from two-thirds of the registered voters of the county as an entirety.

Trusting these views will be helpful to you and with kind regards, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX REDEMPTIONS—INTEREST ON

June 16, 1930.

Dear Sirs:

This will acknowledge receipt of your letter of June 12th on the above subject.

In reply thereto I beg to advise that the Comptroller has taken the position which has been upheld by this office under me and under my predecessors to the effect that the statute now in force does not require the return to the counties of penalties collected by the State on tax redemptions. While this has been usually called "interest" it is really a penalty for non-payment of the tax, a statutory penalty which gives to the State as the law has been construed by state officers.

This is in part to reimburse the State for what it loses in financing

tax sales where the property is put up and sold and no one bids on it and the State has to take title in order to provide a purchaser. In the last mentioned cases the State bears all the expense and when the property is redeemed it takes all of the "interest" to partially reimburse it.

I might add that this question is now before the Supreme Court in a mandamus proceeding which was brought by Hillsborough county against the Comptroller seeking to compel the Comptroller to refund this money to the county. The Supreme Court has had this matter under advisement for a number of months but has as yet announced no decision.

With kind regards, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

FORGED INSTRUMENTS — UTTERING FORGED MORTGAGE
ASSIGNMENT.

June 16, 1930.

Dear Sir:

In the case of Townsend vs. State, 63 Fla. 46 ex parte Amos, 112 So. 289, the Supreme Court held that where a statute particularly set forth and enumerated certain facts or acts as constituting the basis of a criminal prosecution that the specific enumeration referred to is restricted and does not cover any other fact or act except that specifically named in the statute.

Section 7326, Compiled General Laws, referring to the uttering and publishing as true forged instruments, refers back to Section 7324, Compiled General Laws.

Insofar as prosecutions under Section 7326, Compiled General Laws are concerned, it appears that no prosecution can be maintained under Section 7326 for uttering and publishing as true any instrument which could not be the subject of forgery under Section 7324. Section 7324 appears to enumerate every conceivable sort of an instrument as a basis for forgery except an assignment of mortgage. And it would therefore appear not unlikely that the Supreme Court will hold that the alleged uttering of a forged assignment of mortgage cannot be prosecuted under these Sections, especially in view of the rule laid down in the Townsend and Amos case.

Trusting this answers your inquiry on the subject, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTION—QUALIFICATION OF
VOTERS.

June 17, 1930.

Dear Sir:

Section 707 of the Compiled General Laws specifically defines who are qualified voters for special tax school district elections. Since the qualifications are defined by law, they should be strictly adhered to or the election will be illegal. This Section provides that all qualified voters residing within the special tax school district that pay a tax on real or personal property shall be entitled to vote. This means first that

the voter must be a qualified voter, that is, one whose poll taxes have been duly paid for two years preceding the year in which the election is held.

Second, it means that the voter must reside either in the special tax school district which is already created or within the territory which is to be made into a special tax school district.

Third, the voter must pay either a tax upon real or personal property. The statute uses the word "pay" which means only those voters who *pay* the taxes assessed against them are entitled to vote. The mere filing of a return for taxation or the mere assessment for taxation of property will not entitle such person to vote. Of course this does not mean that a person must pay up all taxes assessed against him which are not yet legally due before he is entitled to vote, it simply means that he must have been assessed in the past for some real or personal property subject to taxation in the district and must have paid a tax on same. The purpose of the law was to confine the voting to the permanent residents of the district who had been in the district long enough to have prior to the election *paid* some tax in the district. I think the Legislature used the word "*pay*" as distinguished from some other word with the intention of carrying out this very idea. My observation has been in other districts in the state, the practice is for the Supervisors of Registration to get up a list of all qualified voters who reside in the special tax school district, this list is then turned over to the Tax Assessor or Tax Collector in order that he may check off on the list the names of all voters appearing on such list who appear to have paid a tax in the district.

Section 706 contains the following provision concerning the foregoing.

"It is thereby made the duty of the Supervisor of Registration of any county, to furnish upon payment of such service, to the County Board of Public Instruction on demand, a certified list of the qualified voters residing in a special tax school district, or the territory to be created into a special tax school district, *that have paid a tax on real or personal property for the next year preceding any such special tax election.*"

Only those voters whose names are properly put on the foregoing list are qualified to vote.

Trusting this answers your letter of June 14th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

EMINENT DOMAIN—WATER COURSES—OBSTRUCTION OF AS
TAKING OF PROPERTY FOR WHICH COMPENSATION REQUIRED.

June 19, 1930.

Dear Sir:

In the case of Hortsman Company vs. United States, 66 L. Ed 171, the United States Supreme Court discusses a law applicable to governmental works which have the effect of destroying the use of private property to such an extent that the destruction will amount to more

than a mere tortious damage and will rise to the dignity of a taking of property for which compensation must be made to the owner.

In that case the Court declares that if by public works, such as drainage districts, dikes and the like the value of the property of an individual is substantially destroyed its value is taken within the scope of the constitutional provision requiring the payment of compensation to the owner. Where the government exercises a right and the damages are only incidental to the exercise of such right, there is no liability.

On the other hand, where the government, State or national, constructs works of a public character which have a known consequence of destroying the value of private property, this is deemed as unconstitutional taking of the value of the private property destroyed, unless the government pays for the value destroyed.

Trusting this answers your inquiry of June 14th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

PRISONER'S MAIL—RIGHT OF OFFICERS TO OPEN

July 21, 1930.

Dear Sir:

Your letter of July 17th, addressed to Hon. Doyle E. Carlton, Governor, has been referred to this office for reply.

In the event the jailer has cause to believe that a prisoner may be contemplating an escape and there is a possibility that the letters or mail received by such prisoner has reference thereto, he would be justified in opening such prisoners mail, otherwise, I do not consider he would be justified in doing so.

Trusting this is the information you desire, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

GASOLINE TAX—APPLICATION ON SALES MADE TO STATE

July 22, 1930.

Dear Sir:

Your letter of July 7th. was received at my office while I was absent on two weeks duty at Military Camp and consequently was not answered promptly.

In the case of Panhandle Oil Company vs. Mississippi, 277 U. S. 218, the Supreme Court of the United States held that the sale of gasoline to the government of the United States was not subject to the gasoline tax, because a tax on the sale when made to the sovereign was equivalent to a tax on the sovereign itself. Citizens of the United States live under two sovereigns. The Federal government and the State government. Accordingly I gave it as my opinion that under the principle announced in the Panhandle case above referred to, that a sale of gasoline could be made to the state of Florida itself on a direct contract without being liable to the gasoline tax imposed by the State statute, notwithstanding there was no specific exemption contained in the law. The ruling made by me applies only to sales of gasoline made on contract directly with the State of Florida itself through some Board or agency

who has power to contract or make purchases *on behalf of the State*, such as the State Road Department, the Board of Commissioners of State Institutions or the State Board of Control. Purchases made other than by these Boards are not deemed to be purchases made by the State and accordingly are subject to the State gasoline tax. It is only when one of the official boards of the State directly buys the gasoline and pays for it directly to the oil company or makes a contract to pay for it that the exemption applies. The power to buy on behalf of the State to bind the State, cannot under the Florida law be delegated to employees and subordinates.

You are therefore advised that the State of Florida will expect to enforce the collection of gasoline tax on all sales of gasoline made by oil companies except as above stated. Even then, I think that whatever contract or deal is made should contain on its face a statement to the effect that the Board purchasing the same is purchasing it as claimed to be tax exempt.

Yours very truly,

FRED H. DAVIS, Attorney General.

NEWSPAPER—QUALIFICATION AS MEDIUM FOR LEGAL
ADVERTISEMENT.

July 24, 1930.

Dear Sir:

Your letter of July 11th on the above subject has been called to my attention since my return to Tallahassee.

Section 4901 of the Compiled General Laws provides that a newspaper printed and published periodically once a week or oftener, wholly or in large part in the English language, entered or qualified to be admitted and entered as second class matter at a Post Office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where it is published, or of interest of value to the general public shall be considered a legal newspaper in which can be published any legal notices required by law to be published. However, the foregoing law does not apply to newspapers in which shall be published the notice of advertisement of tax sales, but does apply to every other kind of legal advertisement.

Before a tax sale can be published in a newspaper, the newspaper must have been published continuously in the county for a period of not less than one year prior to its selection as the advertising medium at the first regular meeting of the Board of County Commissioners in February of each year, which is the time for selecting the newspaper in which tax sale notices shall be published. See Section 3 of Chapter 14572, Acts of 1929.

Section 4666 of the Compiled General Laws provides that official and legal advertisements, unless otherwise provided by law, shall be published in the newspaper published either wholly or in part in the county where such publication is required to be made, if there be such

a newspaper. In this connection it will be noted there is a distinction between newspaper "printed" in a county and a newspaper "published" in a county. A newspaper can be "published" in a county without necessarily being "printed" in a county. In such case, the preference is to be given to the newspaper which is both published and printed in the county, although it is not necessary that a newspaper be actually "printed" in a county, provided it is "published" and circulated there in order to make it eligible as a legal advertising medium.

Trusting this answers your inquiry and that it may be helpful to you, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

FIRE INSURANCE—POWER OF MUNICIPALITY TO UNDERWRITE.

July 30, 1930.

Dear Sir:

Answering your letter of July 29th I beg to advise that in my opinion a municipality would have no right to underwrite fire insurance within their corporate limits without special charter powers so to do given by the Legislature, and I seriously doubt whether the Legislature itself could pass a law on the subject which would be constitutional.

Trusting this answers your communication, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LEGAL ADVERTISEMENT—COMPENSATION FOR

August 7, 1930.

Dear Sir:

Replying to your letter of August 5th, making inquiry on the above subject, I beg to advise that I find nothing in Section 4668, Compiled General Laws, which authorizes a newspaper publisher to charge for any more than the actual space used. There is certainly no authority in the statutes for charging for a full inch when only a fractional inch is used.

The proper way to get a court decision on the matter would be to have the Circuit Judge of your Circuit called on to assess costs involving a notice of publication. In this Circuit the Circuit Judge has ruled that only the actual space used need be paid for, and that if five and one-fourth inch should be used that the advertiser did not have to pay for six inches.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX ADJUSTMENTS—METHOD OF ASSESSING AFTER ADJUSTMENT

August 26, 1930.

Dear Sir:

This is in answer to your letter of the 16th on the above subject.

Chapter 14572 contemplates that when an adjustment is made that the land owners shall have until July 1st, 1930, in order to take the adjustment up. This provision must be construed in connection with the other

provisions of the statute, which provide for the completion of the tax assessment roll and the closing of same on April 1st, 1930.

Presumptively, when a person applies for an adjustment he intends to redeem the land, and theoretically the land is redeemed for the time being. It is up to the tax assessor to close his book as of April 1st, 1930. He must assume that all lands on which taxes have been adjusted at that time, are either redeemed or in process of redemption, and consequently must re-assess all of such lands rather than let them stand in the name of the State, as I see it. This means that all of such lands will be re-assessed and resold under a new tax certificate for 1930 taxes, whether the redemptions through the adjustment board are completed or not.

Of course, I do not mean to say that the tax assessor might not leave off the lands from the 1930 tax assessment rolls and wait until 1931 to see if the adjustment is taken up, and then if he finds it has been, back assess the lands in 1931 for 1930 taxes. But unless he does one or the other, the redemption of the taxes which is supposed to include all subsequent omitted taxes would cause the State and county to lose one of the tax years. Of course, if the tax assessor re-assesses any land and extends the taxes on the roll, he will be entitled to his regular commissions for assessing same.

The foregoing is the substance of the opinion that I have given the Comptroller regarding the proposition in question.

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERRY WINE—AS FOOD PRODUCT.

August 27, 1930.

Dear Sir:

This is in answer to your letter of August 25th on the above subject.

This office has construed the laws of Florida as only prohibiting the importation of intoxicating liquors into Florida for beverage purposes, not for industrial or manufacturing purposes. There is nothing in the laws of Florida which will prohibit the importation or use of sherry wine in the manner of a food product which is not for beverage purposes.

Yours very truly,

FRED H. DAVIS, Attorney General.

VETERANS—DUTY OF OFFICERS TO FURNISH COPIES RECORDS.

August 29, 1930.

Dear Sir:

This is in answer to your letter of August 26th on the above subject.

Section 14 of Chapter 14579, Acts of 1929, commonly known as the Uniform Veterans Guardianship Act, provides that all public officials in Florida charged with the custody of public records shall *without charge* provide the applicant for benefits under the Act, or any person

acting in his behalf, or the representative of the United States Veterans Bureau, with a certified copy of the required records.

In the case of *Rawls vs. Nolan*, 120 So 222, the Supreme Court held that it was legal and constitutional for the Legislature to require public officers to furnish certain services free of charge, even though their offices were on a fee basis. The Court further held in that Act that the fees which an officer is permitted by law to charge are regarded as a sufficient consideration to warrant the Legislature in requiring him to perform other services without any charge. In fact, the Legislature has done this in one other instance, as will be seen by Section 8494, Compiled General Laws, which requires the clerk of the circuit court to furnish convicts who are applying for pardons a certified copy of the indictment and sentence against them, and to furnish such copy free.

In my opinion Section 14 of Chapter 14579 requires all public officers in the State of Florida to furnish free of charge to the United States Veterans Bureau or its representative, a certified copy of any public record which was required by such bureau for use in connection with administering the benefits of the United States Veterans Acts. This requirement applies to county judges, clerks of the circuit court, and in fact every officer who has a record which may be needed by the Department.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

ELECTIONS—CAMPAIGN EXPENSE STATEMENT—FAILURE TO
FILE.

September 4, 1930.

Dear Sir:

This will acknowledge receipt of your letter of August 30th on the above subject.

Under the law a candidate who fails to file his campaign expense statement as required under the corrupt practice Act, whether such candidate has opposition in the election or not, his name cannot be printed upon the General Election ballot as a candidate for office pursuant to nominations made in the Primary. It is even made a misdemeanor for the County Commissioners to violate the law by printing the name on the ballot when the candidate has failed to file his campaign expense statement as required by the corrupt practice Act within the time limited by that Act. In such cases, a candidate who has been nominated without opposition becomes disqualified as a nominee of the Primary which leaves a vacancy in the nomination to be filled as provided by law.

It is probable that the Courts will oust a man even after he is elected if his name was improperly printed on the ballot in violation of the State law. At least, there would be a probability of such event happening.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

TAXES CERTIFICATES—ADJUSTMENT AND ISSUANCE OF UNDER
CHAPTER 14572, ACTS 1929.

September 10, 1930.

Dear Sir:

This will answer your letter of September 5th regarding the above subject.

Under Chapter 14572, Acts of 1929, the Clerk of the Circuit Court, subsequent to an adjustment for taxes, and prior to July 1st, 1930, or ninety days thereafter, as the case might be, was authorized to *sell* the tax certificate to an outsider for the adjusted amount of taxes, where the land owner failed to take up the tax certificate within ten days, as provided by law.

The sale was subject, however, to the same right of redemption in the tax payer to redeem the same from the purchaser for the adjusted amount plus interest during the time it could have been redeemed from the State for the adjusted amount.

However, after this time limit expired the holder of the tax certificate has the same right to demand the full amount, irrespective of the adjustment that the tax payer would have had to pay to the State, had the certificate not been sold.

The purpose of the law was to first offer the certificate to the tax payer at a reduced amount, but if he failed to take it up, then to get the money from anyone who was willing to buy it for an equal price.

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL BUSES—LIABILITY SCHOOL BOARDS FOR TORTS
OCCURRING IN OPERATION OF.

September 16, 1930.

Dear Sir:

This will acknowledge receipt of your letter of September 13th on the above subject.

It appears to me that there can be little doubt as to the exemption of liability of a county school board in an action of tort brought against it on account of the operations of county school busses. Consequently, it appears to me that liability insurance on the part of the board would be insuring against a liability which could under no circumstances be successfully maintained against the board.

The Constitution and statutes as well as the holdings of the Supreme Court indicate that the county school fund can only be spent for the support and maintenance of the public free schools of the county. I find nothing in the statutes which would authorize a school board to expend school funds to pay insurance premiums for carrying liability insurance policies to protect the board and liability on account of torts committed in the operation of school busses. This question has been answered by this office before to the same effect as about indicated.

In other cases I have suggested to county school boards that they might properly require as a part of their contract undertaking of the operator the bus, such bus operator to take out liability insurance policies in his own name and on his own account. Of course, the cost

of premiums for these policies might ultimately be reflected in the amount of compensation which the school board would have to pay to the bus operator, but that is the only legal way in which I see the matter could be handled.

Yours very truly,

FRED H. DAVIS, Attorney General.

NOTARIES PUBLIC—REMOVAL DISABILITIES OF YOUTH.

September 16, 1930.

Dear Sir:

Under Section 15 of Article XVI of the Constitution Notaries Public are recognized by the Constitution as being state officers. The provisions of the statute for removing disabilities of non-age of minors have reference to the removal of contractual disabilities and not to political disabilities of such minors, consequently the fact that a minor has had the disabilities of non-age removed by action of the court, in my judgment, would not permit such minor to act as a Notary Public or to legally hold any other office of a political nature. Of course if a minor is appointed and acts as a Notary Public his acts as such done under color of authority would probably be good as against collateral attack as to acts of a defacto officer.

I find that previous Attorneys General have expressed the opinion that a minor could not lawfully be appointed as a Notary Public even if the disabilities of non-age are removed.

Trusting this answers your letter of September 13th, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

BANKS—ALLOWANCE OF SET-OFFS AGAINST DEFUNCT BANKS.

September 16, 1930.

Dear Sir:

In the case of Chipley State Bank vs. McNeil, 82 So. 292, 77 Fla. 827, the Supreme Court held that the right of set-off existed against the receiver of a defunct bank, and was to be governed by the State of things existed at the time of insolvency.

It is under authority of this case that set-offs are allowed by the State Banking Department in the administration of the laws relating to insolvent banks. Unquestionably, the rule laid down by the Supreme Court operates to the great injustice of the depositors, who are not indebted to the bank, by allowing those who are indebted to get a preference on account of their indebtedness, but until the law is changed by the Legislature the above rule has to be followed out.

With kind personal regards, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—MERCHANTS, DRUGGISTS, ETC., WHEN USING
TRADING STAMPS.

September 18, 1930.

Dear Sir:

This is in answer to your letter of September 17th making inquiry as to what construction has been placed upon the license laws of Florida as applied to merchants, druggists and storekeepers giving away coupons or trading stamps with goods they offer for sale.

Section 1199, Compiled General Laws, provides a special license tax upon merchants "using trading stamps." This Section however is not applied to the giving of ordinary coupons or certificates such as accompany Octagon soap, sales of cigarettes and the like, although they are redeemable in merchandise.

The law itself is limited to the merchant who used "trading stamps," that is, some form of stamp or similar device which is redeemable in cash or its equivalent as distinguished from the ordinary coupons and certificates, which are either packed with goods sold or in some cases attached to the *article* sold as distinguished from certificates given out, based not upon the particular *article* but upon the amount of transaction involved.

There is no law in Florida which applies except the statute relating to the giving of trading stamps, which has been construed, as I have pointed out above, to the giving of stamps or other like evidence of value based upon the amount of business done with the merchant rather than upon the purchase of some particular article handled by him in the course of his trade, which is accompanied by a coupon or other premium certificate.

Yours very truly,

FRED H. DAVIS, Attorney General.

SCHOOL BUS—LEGAL AGE FOR DRIVER.

September 18, 1930.

Dear Sir:

Replying to your letter of September 13th., I beg to advise that Florida has not established by law any legal age for school bus drivers. It is presumed that this matter will be covered by contract between the School Board and the driver of the bus. The School Board in employing the bus driver has the right, and it is its duty to fix an age limit such as will insure the safety of the school children, but the matter is left entirely up to the board.

Yours very truly,

FRED H. DAVIS, Attorney General.

LEGAL HOLIDAYS—WHAT DAYS ARE SUCH IN FLORIDA.

Sept. 19th., 1930.

Dear Sir:

Your letter of September 10th. addressed to Governor Carlton, has

been referred to this office for reply. The following is a list of the legal holidays in Florida.

1. The first day of the week, commonly called Sunday.
2. New Year's Day, January 1st.
3. Robert E. Lee's Birthday, January 19th.
4. Washington's Birthday, February 22nd.
5. April 26th. Memorial Day.
6. May 30th. Memorial Day. National.
7. June 3rd. Birthday of Jefferson Davis.
8. July 4th. Independence Day.
9. First Monday in September, Labor Day.
10. The day of every General Election.
11. Thanksgiving Day, designated by the Governor or President.
12. Armistice Day, November 11th.
13. Second Friday in October, Farmer's Day.
14. Good Friday.
15. Christmas Day, December 25th.

Under the law when a legal holiday falls on Sunday, the Monday next following is deemed to be the public holiday for any and all purposes.

In counties where there are Carnival Associations, Shrove Tuesday is observed as Mardi Gras day.

Trusting this information will be of service to you, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

**SPECIAL TAX SCHOOL DISTRICTS—SINKING FUNDS—
HANDLING OF.**

October 2, 1930.

Dear Sir:

The law provides for creating an interest and sinking fund to support bond issues. This fund when created is a sacred trust fund which belongs to the holders of the bonds and of which the school authorities are mere trustees. If the school authorities divert the money for paying the operating expenses of the school or for any other purpose than the specific purpose for which the sinking fund is created by law, such school authorities lay themselves liable to be held personally accountable for every dollar they so divert.

No matter how great the emergency or what the reason for it may be, it is plainly against the law to use the interest and sinking funds of bond issues to defray the operating expenses of the schools. It is also against the law to use the money of one special tax school district to operate a school in another district. In fact, the Circuit Court of St. Lucie County has ruled that since the language of the Constitution requires special tax school district moneys to be spent "within" the district, that such moneys cannot be used for transporting pupils to another school in another district as a more economical measure to that of attempting to maintain a school in the district.

Trusting this answers your letter and with kind regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—AUTHORITY TO MAKE LEVY FOR
SPECIAL TAX SCHOOL DISTRICT BONDS.

October 2, 1930.

Dear Sir:

Answering your request for my views as to the power of the Board of County Commissioners to make a levy for special school tax district bonds under Section 735, Compiled General Laws, sufficient to meet the requirements of that Section after having once already attempted to make a levy which is now found insufficient to meet the requirements, I beg to advise that it seems to me that the case of *Stieff vs. Hartwell*, 35 Fla. 606, is authority for the proposition that an act required to be done in the assessment and collection of taxes is a direction and not a limitation, insofar as the time of doing it is concerned.

Under Section 735, Compiled General Laws, there is a duty imposed upon the county commissioners to make a tax levy sufficient to raise and pay the interest on special tax school district bonds and sufficient to create the required sinking fund. Any levy made by the board of county commissioners which is less than what is required to pay the interest and create the sinking fund is not a complete fulfillment of the duty imposed by law upon the county commissioners under Section 735, and consequently could be enforced by a mandamus.

The mere failure of tax officers to complete what is required to be done in the collection of taxes does not defeat the collection of such taxes nor defeat the right of interested parties to require the omitted requirements to be performed. See *City of Pensacola vs. Bell*, 22 Fla. 469.

In addition to these two Supreme Court cases we have Chapter 14572, Acts of 1929, which provides that any act of omission or commission on the part of the county commissioners with reference to taxation may be corrected any time in like manner as is now or might hereafter be provided by law for performing such acts in the first place, and when so corrected such acts shall be construed as valid ab initio, and shall in no way affect any process provided by law for the enforcement of the collection of any such tax.

As I view the situation, whatever a board of county commissioners might be mandamusd to do can be done by the board of county commissioners voluntarily without mandamus upon demand for performance especially in view of the 1929 law expressly authorizing the same to be done, and any time afterwards.

Yours very truly,

FRED H. DAVIS, Attorney General.

LAWYERS—DISBARMENT—CAUSES FOR.

October 6, 1930.

Dear Sir:

Under Section 4172, Compiled General Laws of Florida, disbarment of an attorney is authorized for dishonest conduct, habits of general immorality or any such single act or crime or vice as may show him to be unfit for the trust and confidence reposed in him as an attorney, or of deceit or misconduct in his office of attorney, or suppressing or attempting to suppress testimony in any case, or of tampering with any

record, or of stirring up litigation or being drunk while a case under his charge is being considered in court, or any unprofessional acts which unfit him for association with fair and honorable lawyers.

Trusting this is the information you request in your letter, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

DIVORCES—CUBAN DIVORCES—VALIDITY AND RECOGNITION IN
FLORIDA.

October 6, 1930.

Dear Sir:

This will acknowledge receipt of your letter of September 23rd advising me that the Cuban Congress has passed a law providing that Americans may procure divorces in that country without having anything more than a certificate of marriage to institute the proceedings, court appearances and testimony not being required, and even residence in Cuba not necessary as a pre-requisite to the divorce.

The new law, I note from your letter, contains sixteen grounds which appear to cover about every possible excuse which a person might wish to give as a reason for getting a divorce, even though of a most inconsequential nature.

Answering your request for my opinion as Attorney General of the State of Florida as to the status of such Cuban divorces in Florida, I beg to advise that under the ruling of the Florida Supreme Court in the case of Herron vs. Passailaigne, 110 So. 539, such Cuban divorces will only be recognized under the rules of comity when the circumstances under which the divorce was granted are such as would sustain an action for divorce under the laws of Florida, and where it was made to appear that the Cuban courts had actual jurisdiction of at least one of the parties to the suit.

Insofar as the Cuban law attempts to authorize the granting of a divorce without the appearance of the parties before the court, I think that such law is contrary to the spirit of the Florida law on the same subject, and under the ruling of the Florida Supreme Court such divorces so granted will not be recognized. Of course, in those cases where both of the parties to the marriage become domiciled in Cuba and obtain a divorce there under the laws of that country, the decree will no doubt be given full force and effect in Florida.

In cases where only the plaintiff is within the jurisdiction of Cuba at the time the divorce is applied for and granted, it will probably be necessary for such plaintiff to bring a suit in Florida under the terms of paragraph 8 of Section 4983, Compiled General Laws, to establish the validity of such divorce as being sustainable under the laws of Florida, before it will become completely effective here.

Trusting this answers your letter, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

BONDS—EVERGLADES DRAINAGE DISTRICT BONDS—STATE DOES NOT GUARANTEE OR UNDERWRITE BONDS OF DISTRICT.

October 6, 1930.

Dear Sir:

This will answer your letter of September 30th on the above subject.

There is quite a general misunderstanding as to the nature of the interest of the State of Florida in Everglades Drainage District bonds. The State has never undertaken to guarantee or underwrite the bonds of the Drainage District, nor is it liable to make good any deficiency in tax collections in the District.

State officers handle the affairs of the District and enforce collection of the taxes and see that the taxes are applied to pay the bonds. None of the bonds of the District has ever defaulted. At the same time, the State does not guarantee the taxes of the District, nor pay such taxes except as to land of which it is the bona fide owner, irrespective of having acquired the same at tax sale.

The State owns about 800,000 acres in the District and pays taxes on its own lands promptly. Other lands on which taxes are not paid are sold and bid in by the State, if no one else buys them, but the latter class of lands are only held by the State subject to redemption. The State does not guarantee to pay the taxes on these last mentioned lands.

So far the District has never defaulted in interest or principal on its bonds.

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAX—WHOLESALE AND RETAIL FISH DEALERS.

October 21, 1930.

Dear Sir:

The Florida law defines a wholesale dealer as anyone who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer as one who sells fish directly to the consumer.

This means that if a man catches fish with his nets he is not subject to a retail or wholesale license under Section 1259, Compiled General Laws, except that he may become subject to the retail dealer's license where he sells his fish directly to the consumer.

Trusting this answers your letter, and regretting that it has been delayed through my absence from the city, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAX—RIGHT OF MUNICIPALITY TO TAX AUTO TRANSPORTATION COMPANY.

November 6, 1930.

Dear Sir:

This will acknowledge receipt of your letter of November 4th on the above subject.

The language of Section 5 of Chapter 13700, Acts of 1929, reads as follows:

"No municipality shall have the right to require such auto

transportation company to furnish any bond or insurance policy, or to pay any license, fee or tax except as herein provided."

I am ready to admit that there may be some doubt as to whether this language is sufficiently covered by the title of the bill, but taking it for granted that the provision is sufficiently covered by the title of the bill and is therefore a valid law of the State, I do not see how any city charter provision in conflict with it can prevail.

I am familiar with the case of *Apalachicola vs. State*, 112 So. 618, which involves a different principle from what is involved here. In that case the principle involved was that where two methods of doing a thing were permitted, one by general law and one to a particular city by special law, that the special law formed an exception to the general law and must prevail.

Here, however, we have a direct prohibition contained in a general law, which applies to and restricts the right of municipalities, not as of the date that the law was enacted but as of all time while the general law is in force. In other words, here is involved a direct *conflict* between a general law and a special law as distinguished from a variance of method for doing a thing under the general law and the special law.

In arguing the constitutionality of Chapter 13700 before the Supreme Court and which is now before the United States Supreme Court, I strenuously insisted upon the fact that this exemption from local taxation contained in Section 5 was a sufficient consideration to support the mileage tax levied by this law. In this connection it may be stated that the mileage tax was being contested on the ground that it would be a toll for the use of the Federal highways, which toll was prohibited by the Federal law.

I contended that the mileage tax was not a toll, but was a tax upon the privilege of operating a bus company free from local taxation and local regulation, and was only measured by the number of miles travelled as a means of getting at the amount. The Court evidently accepted this view, because it sustained the act. The provision of Section 5 restricting the right of municipalities to collect special license taxes against bus companies is similar to Section 1013, Revised General Statutes, which restricts the right of municipalities to levy a registration fee on motor vehicles and require motor vehicles to take out a local tag in addition to the State tag.

Personally, I can see a clear distinction between a general law which *prohibits*, and a special law which *authorizes*, as compared with one general law which permits under certain conditions, and another special law which permits under different conditions. No municipality would have the right to tax auto transportation companies except under authority of the Legislature. Consequently, when the Legislature used the language "no municipality shall have the right, etc. . ." it evidently intended to withdraw from any municipality any legislative authority which had theretofore been granted in its charter to levy such taxes.

Furthermore, it may be said that this being a provision of the general law, it operates as against any charter provision subsequently passed

by the Legislature in the absence of a clear intent shown in the subsequent legislation to repeal pro tanto a portion of the general law.

I realize the possible injustice of not taxing these bus companies locally the same as others are taxed, but at the same time we are dealing with a law as it is written and the remedy for the situation lies with the Legislature, as I see it.

In view of the argument that I have already made before the Florida Supreme Court and the argument I intend to make before the United States Supreme Court to the effect that local taxation is prohibited, I feel that I am bound by that alone if nothing more to maintain, until such time as the Supreme Court declares otherwise, the proposition that Chapter 13700 excludes local taxation for the present.

Trusting these views will be helpful to you, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

FORECLOSURE PROCEEDINGS—INVOLVING DECREES AGAINST
THE STATE—PRIORITY OF JUDGMENT LIENS INFERIOR TO
MORTGAGE.

November 21, 1930.

Dear Sir:

The question raised in your letter of November 17th is not at all new insofar as this office is concerned. Perhaps fifty cases have been filed in which it was sought to foreclose mortgages against State judgments upon bonds which were alleged to be junior to the mortgage being foreclosed.

Unquestionably, the State cannot be sued without its consent, but I find nothing which will preclude the State from intervening in a pending suit involving property upon which it has a claim by judgment therein or otherwise, and asking the court in the pending suit to determine whether or not the State's claim is inferior or superior to the other claim.

Consequently, the practice has been for the Attorney General to appear and file voluntary answer setting up the State's claim in the matter and submitting the question to the determination of the court. I cannot see why a decree made under such circumstances would not be valid, because the Attorney General would certainly have the right to bring an Independent suit and make the mortgagee a party defendant to establish priority. Many of the judges, including Judge Gibbs of Duval County's Circuit, have filed decrees in cases of this kind. To all intents and purposes the State is a nominal party only, insofar as the judgments are concerned, because the judgments are really rendered in favor of the State for the use and benefit of the county.

The practice has been to make the county and the State through the Attorney General a party defendant to these proceedings, and answers are thereupon filed submitting the matter to the decree of the court as to priorities. As a matter of practice we usually request that counsel submit the matter to the local attorney for the county commissioner's

and have him examine the abstracts in order to determine whether or not the motion is really a superior lien to the judgment.

The money if collected goes to the county commissioners, and consequently I think that the commissioners' attorney should be the one to pass upon the matter. And if he reports favorably this office invariably cooperates by filing the necessary answers submitting the matter to the consideration of the court.

I think the cases of *Cunningham vs. Macon*, 109 U. S. 446; *Tindal vs. Wesley*, 167 U. S. 204; *Christian vs. Atlantic and N. C. R. Company*, 133 U. S. 233, render the practice we have been pursuing in this respect entirely proper.

Awaiting your further suggestions in the premises, I am,
With kind personal regards,

Yours very truly,

FRED H. DAVIS, Attorney General.

TAXES—COLLECTION OF—DISCOUNT FOR PAYMENT

December 8th, 1930.

Dear Sir:

This is in answer to your letter of December 6th, on the above subject.

Section 950 of the Compiled General Laws as amended by Section 2 of Chapter 14572, Acts of 1929, reads as follows:

"950 (741). *WHEN TAXES DUE: DISCOUNT IF PAID BEFORE CERTAIN TIME.* All taxes shall be due and payable on the first day of November of each and every year, or as soon thereafter as the assessment roll may come into the hands of the Tax Collector, of which he shall give notice by publication, and the Tax Collector is hereby vested with the power, and it shall be his duty to collect by levy and sale of the goods and chattels, lands and tenements assessed, all taxes that remain unpaid on the first Monday in April. Discounts for early payments thereof shall be at the rate of 4 per cent in the month of November, 3 per cent in the month of December and 2 per cent in the following month of January, and 1 per cent in the following month of February, the taxes being payable in March without discount."

You will observe that the above section specifically refers to collections of taxes made by the *Tax Collector*. When lands have already been sold for taxes and bought in by the State, the current taxes are collected as a part of the charge for the redemption of the certificate. This redemption is made by the *Clerk of the Circuit Court* and not the Tax Collector, as the Tax Collector has nothing to do with the collection of money relating to the redemption of certificates, therefore, the foregoing law which allows the *Tax Collector* to grant a discount of 4 per cent does not apply to the Clerk of the Circuit Court when he collects current taxes as a part of the redemption of a delinquent certificate. I might add that the collection of current taxes when a certificate is redeemed is made necessary because under the law lands under state tax certificates are not reassessed so long as the certificate is unredeemed. If the current taxes

were not collected, the lands might entirely escape taxation for the current year.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

VETERANS—MARRIED WOMAN AS GUARDIAN.

December 9, 1930.

Dear Sir:

This is in answer to your letter of December 1st regarding the above subject.

I think the holding of the Supreme Court in the case of Cozine vs. Randolph, 71 Fla. 603, possibly answers the doubt you have in your mind as to the giving of a legal bond by a married woman. In that case the Supreme Court held that the bond would be legal if given by a married woman, because it would bind the sureties, notwithstanding the fact that the married woman principal would not be bound by such bond. I find nothing in the law which expressly prohibits the wife of an incompetent veteran to be appointed as his legal guardian, and it would seem that in the absence of such prohibition that the wife would be qualified as much so as any other person. It would seem that the foregoing holding of the Supreme Court sufficiently covers the question of any bond that would be required of such married woman in order to act as such guardian.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

OSTEOPATHIC—RIGHT TO PRACTICE.

December 18, 1930.

Dear Sir:

This is in answer to your letter of December 15th requesting information as to the legal status of licensed osteopathic physicians under the laws of Florida.

Under our law the practice of osteopathic medicine embraces whatever is usually included as being embraced within the tenets of that school of medicine as taught in standard colleges of osteopathy. Consequently, reference must be had to the tenets of the profession as so taught, in order to determine whether or not the practice embraces the use of narcotics. The language of the statute in this particular reads as follows:

"It is the intent and purpose of this Chapter to grant to osteopathic physicians and surgeons the right to practice as taught and practiced in the standard colleges of osteopathy."
See Section 3429, Compiled General Laws.

Another section of the statute also provides that "physicians and surgeons of the osteopathic school of medicine are to be of equal rank and grade as the physicians and surgeons of the other three schools of medicine designated as allopathic, homeopathic, and eclectic, to have all

rights except to use drugs not taught in the standard colleges or schools of osteopathy." See Section 3423, Compiled General Laws.

It seems to me that under the foregoing quoted terms of the statutes osteopathic physicians in Florida stand in general on exactly the same footing as other licensed physicians, and that if the use of narcotic drugs is countenanced as a part of the practice of osteopathy as taught in the standard colleges dealing with that subject, then such use of narcotic drugs by osteopaths is clearly given by the laws of Florida.

Yours very truly,

FRED H. DAVIS, Attorney General.

BLUE SKY LAW—CORPORATIONS—SALE OF STOCKS, ETC., IN
COUNTY WHERE PRINCIPAL PLACE BUSINESS.

December 19, 1930.

Dear Sir:

This is in answer to your letter of December 17th regarding the above subject.

Sections 5994 et seq. Compiled General Laws, only applies to sales of stocks, bonds or other securities of Florida corporations when such are offered for sale "outside of the county where such corporation has its principal office or place of business."

Insofar as domestic corporations are concerned, no permit or license is required for selling stocks and securities of Florida corporations in the counties where the principal place of business is located.

Trusting this answers your letter, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

WATER COURSES—LIABILITY FOR CHANGING OR RESTRAINING
FLOW OF WATER.

December 31, 1930.

Dear Sir:

In the case of Davis vs. Ivy, 112 So 264, decided by the Supreme Court of Florida, March 5th, 1927, and later upheld by the United State Supreme Court in the case of Mellon vs. Ivy, 275 U. S. 526, 72 L. Ed 407, it was held that it is the duty of those changing or restraining the natural flow of water to provide against the consequences that will result from such change or restraint. This means that no person has the right to put dams, dikes or obstructions on his own land of such kind or character as will cause water to be interrupted in its natural flow and back up or overflow the land of his neighbor. If he does so he is liable to an action for damages, and it was so held in the above case where a judgment of \$8,000 damages against the Florida East Coast Railroad for failure to provide a proper water course under its tracks was upheld for injury done to a farm by the water which was diked up.

Trusting this answers your inquiry, and with kind personal regards,
I am

Yours very truly,

FRED H. DAVIS, Attorney General.

APPENDIX

List of Books in Library

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 Accident Prevention and Relief
 Amer. Negligence Digest
 Bailey on Habeas Corpus
 Bishop's New Criminal Law
 Bishop's New Criminal Procedure
 Bishop's Directions and Forms
 Bishop on Statutory Crimes
 Cooley on Taxation
 Cooley Constitutional Limitations
 Cook on Corporations
 Criminal Forms, Adjudicated
 Cyclopaedia Law Dictionary
 Due Process of Law—Magee
 Errors in Criminal Proceedings—Walker
 Fed. & State Laws Rel. to Intox. Liquors
 —Wheeler
 Fed. Trade Com. Manual—Harvey-Bradford
 The 14th Amend.—Brannon
 Greenleaf on Evidence
 Highs Extraordinary Legal Remedies—Spelling
 International Pub. Law—Taylor
 Intoxicating Liquors—Joyce
 Judson on Taxation
 Law of Insanity—Smoot
 Law Books and Their Use
 Lewis' Eminent Domain
 Limits on Treaty Making Power—Tucker
 Limits on Taxing Power—Gray
 A Manual of Courts Martial, U. S. Army
 Manual of Securities Laws—Cowan
 McCreary on Elections
 Mechem on Pub. Officers
 Moore on Extraditions
 Municipal Corporations—Dillon

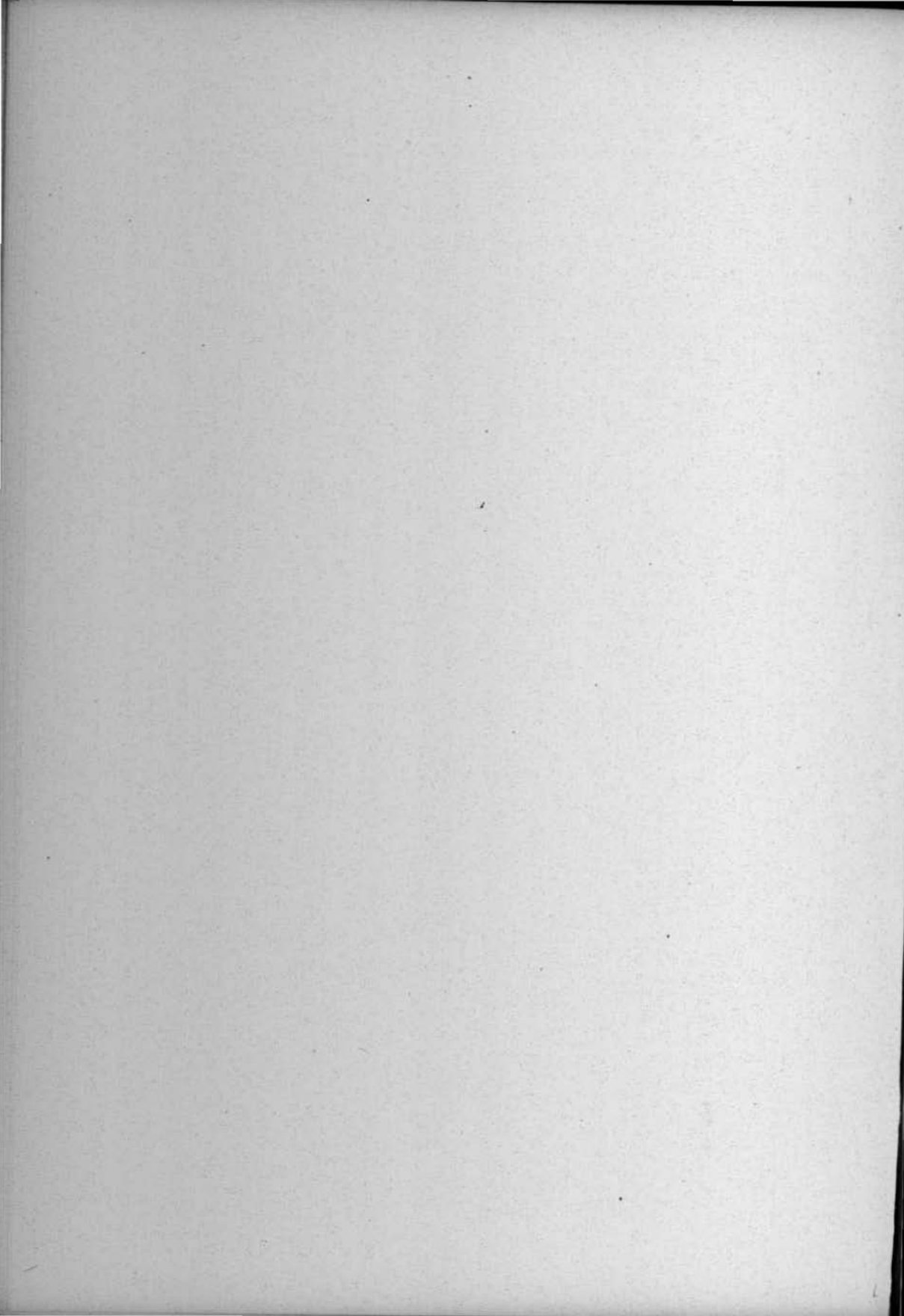
Murphee on Official Bonds
 Perry on Trusts and Trustees
 Pub. Officers—Thropp
 Puterbaugh, Pleading and Practice
 R. R. Rate Regulations
 Rules and Manual U. S. Senate
 Search & Seizure—Cornelius
 Simkins Federal Practice
 Story's Equity Jurisprudence
 The South's Physical Recovery
 Study of Workmen's Compensation
 The Evolution of Roman Law
 Taxation of Fed. and Municipal Bonds
 Thompson on Trials
 Title to Real Property
 Underhill on Criminal Evidence
 Unincorporated Associations
 Wharton's Criminal Evidence
 Wharton's Criminal Law
 Wharton's Criminal Pleading & Practice
 Wharton's Criminal Procedure
 Wharton on Homicide
 Waters & Water Rights—Farnam
 Westervelts Pure Food and Drug Laws
 Wigmore on Evidence
 Willoughby on the Constitution
 Winston on International Law
 Who's Who in America (1930)
 Who's Who in Jurisprudence
 Florida Digest Supplement
 Black's Law of Judicial Procedure
 Fla. Hist., Topography, Climate, Soil
 Digest of Florida Reports
 Wurts Florida Digest

SPECIAL SECTION

U. S. Compiled Statutes
 Public Land Statutes of U. S.
 Navigation Laws of U. S.
 Appel. Pract. & Proc. in S. C. of U. S.—Robertson
 Benders War Revenue Law
 Military Law of the U. S.
 Charters & Consts.
 U. S. Statutes (Vols. 35, 6, 7, etc.
 Laws of Florida, 1843-48, 46, 71, 50, 58, 59,
 68, 77, 85, 89, 87, 83, 91, 92, 93, 95, 97,
 99, 1001, 03, 04, 05, 06, 07, 09, 11, 13
 14, 15, 17, 19, 21, 23, 25, 27.
 Hopkin's New Fed. Equity Rules
 House Miscellaneous Documents
 Fed. Food and Drug Acts
 U. S. Anno Blue Sky Laws—Elliott
 Fed. Equity Pract.—Street
 Fed. Appellate Jurisdiction & Proc.
 A Treatise on Sherman Anti-Trust Law
 Bush' Digest
 Lewis Sutherland Statutory Courts
 McClelland's Digest
 Fla. Index Digest
 Manual of J. of P. and County Judge
 MR. CAMPBELL'S OFFICE
 Fla. Reports (Vol. 1-93), Fla. Digest
 Sheppard's Citations
 Compiled General Laws of Fla.
 MR. DAVIS' OFFICE
 Anno. Blue Sky Laws of U. S.
 Attorney General's Report 1889-1928
 Bender's Fed. Forms
 Browne's Kent's Commentaries
 Compiled General Laws of Fla.
 Const. Man. and Digest
 Cyclo of Fed. Procedure

Ed Survey Com. & Survey Staff Report
Essence of Life Insurance
Everglades Drainage Dist. Proc.
Fla. & So. Digest
Fla. Reports (Vols. 1-79)
Fla. Digest Anno & Supplement
Georgia Code
Handbook of Nat. Confer. of Coms. Uni.
Sta. Laws & Procd.
Hopkin's Judicial Code & Jurisliary (2nd
& 3rd Ed.)
Laws of Fla. Special Acts (1923-29)
Laws of Fla. General (1919-1929)
Law Observance
Making of Const.—Warren
New Ann. Fed. Jud. Code—Hopkins

Practice & Proc. in S. C. of U. S.—Rob-
ertson
Readings on the Hist. & Sys. of Com. Law
Rose Fed. Jurisdic. & Prac (4th Edition)
U. S. Code, Compact Ed.
Law Dictionary (Baldwin's Revised)
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Southern Reporter
Fla. & So. Digest
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